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1 PROCEEDINGS

2 JUDGE JONES: Good morning. I call for
3 hearing Docket Number 07-0446 on reopening. This is
4 titled, in part, Enbridge Pipelines (Illinois) LLC,
5 Application pursuant to Sections 8-503, 8-509, and
6 15-401 of the Public Utilities Act - the Common
7 Carrier by Pipeline Law to Construct and Operate
8 Petroleum Pipeline, and when necessary, to Take
9 Private Property as Provided by the Law of Eminent
10 Domain.

11 At this time, we'll take the respective
12 appearances orally for the record. If you appeared
13 at the prehearing conference on reopening on
14 July 17th, you need not restate your contact
15 information unless it has changed or you simply want
16 to do that. You need not respell your name either.

17 So we will start with the appearance or
18 appearances on behalf of the Applicant.

19 MR. REED: Thank you, your Honor. G. Darryl
20 Reed and Dale E. Thomas of the law firm Sidley Austin
21 LLP. And also Amy Graham Back. All three of us on
22 behalf of the Applicant in this proceeding.

23 JUDGE JONES: Thank you.
24 Commission Staff.

1 MR. OLIVERO: Thank you, your Honor.

2 Appearing on behalf of the Staff of the

3 Illinois Commerce Commission, John Feeley and James

4 Olivero. And I believe our addresses are already on

5 file.

6 JUDGE JONES: All right. Thank you.

7 Dr. Pliura.

8 DR. PLIURA: Tom Pliura, P-L-I-U-R-A, on

9 behalf of a collective group of individuals that have

10 been parties as Intervenors known as the Pliura

11 Intervenors. And I believe our information is

12 already in the record.

13 JUDGE JONES: Thank you.

14 Mr. Turner.

15 MR. TURNER: Do I have to get close to this,

16 Judge?

17 JUDGE JONES: Is it turned on?

18 MR. TURNER: It's green.

19 JUDGE JONES: It's pretty sensitive. If

20 it's in between, you will probably be okay. Go ahead

21 and enter your appearance now.

22 MR. TURNER: My name is Mercer Turner. I am

23 an attorney for the Turner Intervenors. Thank you.

24 JUDGE JONES: Thank you.

1 Are there other appearances to be entered
2 this morning?

3 MR. KNAPP: Sir, my name is Don Knapp. I'm
4 Assistant State's Attorney in McLean County on behalf
5 of McLean County. I entered my appearance yesterday
6 on e-Docket. I don't necessarily think I will need
7 to question anybody, but just for the record.

8 JUDGE JONES: And could you give us your
9 business address and phone number, sir?

10 MR. KNAPP: Sure. It's 115 East Washington,
11 Bloomington, Illinois, 61701. Last name is
12 K-N-A-P-P.

13 JUDGE JONES: Thank you.

14 Before I forget, if anyone is having any
15 trouble hearing anyone else, just let us know. Speak
16 up, and we'll move some persons around or equipment
17 around so that everybody can hear.

18 Turning to counsel for the Applicant,
19 Applicant will be presenting what this morning?

20 MR. THOMAS: Yes, Judge.

21 We will be presenting Mr. Lee Monthei. He
22 is an executive of the company to whom Mr. Randy Rice
23 reported. As I think you know, and I am going to
24 state it on the record, that Mr. Rice was taken

1 seriously ill; and so, Mr. Monthei -- excuse me --
2 has agreed to substitute in his place.

3 JUDGE JONES: Could you spell his last name
4 for the court reporter?

5 MR. THOMAS: Yes. I gave her a card. But
6 it's M-O-N-T-H-E-I. And Lee is the first name.

7 JUDGE JONES: Thank you.

8 What is it that the Applicant proposes to do
9 today with respect to its case?

10 MR. THOMAS: What we propose to do is simply
11 have Mr. Monthei reaffirm the verifications
12 originally given by Mr. Rice as to two documents, in
13 particular. Our Motion to Amend and Reopen and --
14 Reopen and Amend, excuse me -- and our motion, our
15 reply on that.

16 As your Honor will remember, we stated in an
17 earlier proceeding, we would stand on those as our
18 affirmative case. And he is simply affirming the
19 facts in those.

20 And then we would also want to put into
21 evidence our responses to the initial set of data
22 requests by the Pliura Intervenors and the Turner
23 Intervenors, both of which were attested to by Mr.
24 Rice.

1 So Mr. Monthei would reaffirm that
2 attestation for those two and we would propose to put
3 those four documents into the record. The first two
4 are already on e-Docket. The second two were served
5 on the parties. They are not yet on e-Docket. But
6 with your Judge's permission, we would file those on
7 e-Docket tomorrow.

8 JUDGE JONES: So the third will be?

9 MR. THOMAS: Third would be -- the third
10 would be responses of Enbridge Pipelines (Illinois)
11 LLC to Turner Intervenor data request dated August 5,
12 2014. And four would be our response to Pliura
13 Intervenors' data request.

14 JUDGE JONES: And you intend to make a
15 motion with respect to the above?

16 MR. THOMAS: What I would propose to do --
17 again, it depends on your Honor's pleasure -- is Mr.
18 Monthei would go to the stand. I would take him
19 through some questions on these just to have him
20 reaffirm them. And then we would move those into
21 evidence and submit for cross examination.

22 JUDGE JONES: Thank you.

23 Any questions about that process?

24 DR. PLIURA: Your Honor, Tom Pliura.

1 Pliura Intervenors will object to the
2 introduction of the data requests. We've previously
3 had hearings on this matter, and they indicated they
4 were going to stand on their application. And
5 subsequent to that, after that hearing, then they
6 said they were going to -- would ask to stand on the
7 application and the reply.

8 Now, they are trying to introduce into this
9 proceeding responses to data requests that were not
10 served on Pliura Intervenors at the time. We can get
11 into that, and I intend to. But they were never
12 served at the time by either Staff or Enbridge. So
13 we would respectfully object.

14 JUDGE JONES: Well, the motion hasn't been
15 made, but you indicated your intention to take issue
16 with that. Still somewhat preliminarily in nature.

17 Is it anticipated that there will be some in
18 camera cross examination of the Applicant's witness?

19 MR. REED: I can't -- my assumption, your
20 Honor -- this is Darryl Reed speaking.

21 My assumption is that either the Pliura
22 and/or Turner Intervenors may likely want to delve
23 into certain matters that the Applicant deems to be
24 confidential.

1 JUDGE JONES: All right. If that happens,
2 that would involve going in camera. Hopefully, that
3 will be kept at a minimum. We like to keep the
4 record as public as possible. Also, it's somewhat
5 disruptive to the process and inconvenient to the
6 participants if they have to repeatedly leave the
7 room and come back while in camera examination is
8 going on.

9 I assume that counsel for the Applicant will
10 indicate if a question is asked if they believe to be
11 one that would involve in camera responses. Is that
12 the idea?

13 MR. REED: That is correct, your Honor.

14 And while we're discussing this matter, if I
15 may. This will be brief. Pursuant to the terms of
16 the Protective Order, individuals who have executed
17 Forms 1 and 2, the attorneys dealing with
18 confidential matters, as they have, we have no
19 objection, obviously, to discussing certain matters.

20 Form 3 attached to the Protective Order
21 addresses all other parties, consultants, witnesses.
22 To the best of my knowledge, no one has executed Form
23 3. Therefore, if we do go in camera, we respectfully
24 request that only the attorneys be allowed to

1 participate; and their witness must, in fact, leave
2 the room at that time.

3 JUDGE JONES: And in your view, what would
4 it take? What would be necessary for those others to
5 be able to stay?

6 MR. REED: If they are willing to execute
7 the Form 3 and have it attested to, we would have no
8 objection to their participation.

9 But I'll defer to counsel for the
10 Intervenor with respect to that matter.

11 JUDGE JONES: Well, if we get -- I think
12 that gives everyone an idea that that is a fairly
13 likely possibility here and how it will work,
14 generally. To the extent that does occur, we'll
15 obviously have to speak to it a little more.

16 But as noted, that will involve some
17 clearing of the room. And we like to keep that --
18 keep those occurrences as limited as possible. As
19 noted, it is somewhat disruptive and inconvenient to
20 those that have to do that. Plus, as noted, we like
21 to keep the record as public as we can.

22 While there is a Protective Order or ruling
23 on Protective Order in place, so it is in effect. If
24 there is testimony that counsel for Applicant

1 believes to be protected under that agreement as
2 confidential, then that will happen for today's
3 purposes.

4 I would note that in the event that counsel
5 for Intervenor believe that the confidentiality
6 designation is one they disagree with, they will be
7 given an opportunity to essentially object to the
8 continued confidential treatment of that. And then
9 it will be a process for getting that addressed.

10 But if that comes up, there will really --
11 that will not occur today. I will not be taking
12 argument, attempt to rule on confidentiality on any
13 of those items for today's purposes. But we will
14 speak a little bit more at a later point in the
15 hearing today as to what that process would involve
16 in the event that Intervenor wish to challenge the
17 confidential nature of that material.

18 Does anybody have any questions about that
19 before we move along?

20 DR. PLIURA: No questions.

21 JUDGE JONES: Is the Applicant ready then to
22 proceed with the witness?

23 MR. THOMAS: We are.

24 JUDGE JONES: Before we do that, Mr. Knapp,

1 if you decide you want a seat up here, just let us
2 know and we'll figure it out.

3 MR. KNAPP: Fair enough.

4 JUDGE JONES: Applicant calls who?

5 MR. THOMAS: Lee Monthei.

6 * * * * *

7 LEE MONTHEI,

8 of lawful age, produced, sworn and examined on behalf
9 of the APPLICANT, testifies and says:

10 MR. THOMAS: And just so all the parties are
11 aware, the documents that Mr. Monthei has up are
12 precisely the documents we described that we will be
13 trying to put into the record.

14 DIRECT EXAMINATION

15 QUESTIONS BY MR. THOMAS:

16 Q. Mr. Monthei, would you please state your
17 full name for the record?

18 A. My full name is Emery Lee Monthei, Junior.

19 Q. By whom are you employed?

20 A. Enbridge.

21 Q. What is your position there?

22 A. My position is Vice President of Execution
23 for Major Projects in the U.S.

24 Q. What are the duties of that position?

1 A. I manage a portfolio of large construction
2 projects, mostly pipeline related.

3 Q. Did Randy Rice report to you in your
4 position on the SAX project?

5 A. He does.

6 Q. Are you generally familiar with the SAX
7 project?

8 A. I am.

9 Q. Have you familiarized yourself with the
10 filings in this proceeding that were verified by or
11 attested to by Mr. Rice?

12 A. I have.

13 Q. Let me show you a document. Take it out of
14 your pile. It is entitled Motion to Reopen and Amend
15 Order Concerning Diameter of the Southern Access
16 Extension Pipeline. It is nine pages long and it's
17 followed by a page called the Verification of Randy
18 Rice. And it has been marked as Enbridge Illinois
19 Exhibit 1.

20 Do you recognize this document?

21 A. I do.

22 Q. Now, if you would turn to the verification
23 at the end of that document.

24 Mr. Rice states that he has personal

1 knowledge of the facts contained in that motion or
2 the facts therein are based on business records of
3 Enbridge Illinois and that the statements set forth
4 in the motion are true and correct or upon
5 information and belief are believed to be true.

6 Do you now reaffirm that verification?

7 A. I do.

8 Q. Are you a lawyer?

9 A. I am not.

10 Q. So are you verifying only as to the
11 statements of fact?

12 A. That's correct.

13 Q. Subject to the qualifications you have just
14 expressed, is Exhibit 1, the Motion to Reopen and
15 Amend, part of your testimony in this case?

16 A. Yes.

17 Q. And are there any corrections?

18 A. None.

19 Q. Let me turn to a second document. It is
20 entitled Reply of Enbridge Pipelines (Illinois) LLC
21 on Motion to Reopen and Amend Order Concerning
22 Diameter of the Southern Access Extension Pipeline.
23 It has been marked Enbridge Illinois Exhibit 2. And
24 it is 33 pages long, followed, again, by a

1 verification of Mr. Rice.

2 Have you seen this document before?

3 A. I have, yes.

4 Q. In the verification, Mr. Rice states that he
5 has personal knowledge of the facts contained in the
6 reply or the facts therein are based on business
7 records of Enbridge Illinois, and the statements set
8 forth in that reply are true and correct or upon
9 information and belief are believed to be true.

10 Do you now reaffirm that verification?

11 A. I do.

12 Q. And are you verifying any legal arguments in
13 that reply?

14 A. No, none.

15 Q. Subject to the qualifications you have just
16 expressed, is Exhibit 2 the reply part of your
17 testimony in this case?

18 A. Yes.

19 Q. Any corrections?

20 A. None.

21 Q. Let me show you the third document. It's
22 entitled Responses of Enbridge Pipelines (Illinois)
23 LLC to Turner Intervenor Data Requests Dated
24 August 5, 2014. It has been marked as Enbridge

1 Illinois Exhibit 3. Exhibit 3 is 37 pages long. And
2 at the end, there is a page entitled Attestation for
3 Response to Turner Intervenors Data Requests dated
4 August 5, 2014.

5 In that attestation, Mr. Rice states that
6 after being first duly sworn under oath, he deposes
7 and states that he has read the responses to Turner
8 Intervenor Data Requests and that the answers made
9 therein are true, correct and complete to the best of
10 his belief.

11 Do you now reaffirm that attestation?

12 A. I do.

13 Q. And, again, are you attesting to any legal
14 arguments?

15 A. No.

16 Q. Subject to the qualifications you have just
17 expressed, is Exhibit 3, the Response to Turner
18 Intervenor Data Requests dated August 5, 2014, part
19 of your testimony in this case?

20 A. Yes.

21 Q. Any corrections?

22 A. None.

23 Q. Finally, let me turn to a fourth document.
24 It's been marked Enbridge Illinois Exhibit 4. It is

1 Responses of Enbridge Illinois Pipelines -- Enbridge
2 Pipelines (Illinois) LLC to Pliura Intervenors Data
3 Requests dated August 11, 2014, in Docket 07-0446.

4 MR. THOMAS: It will be filed on e-Docket
5 tomorrow, as will, your Honor, the previous Enbridge
6 Exhibit 3.

7 Q. (By Mr. Thomas) This has been marked as
8 Enbridge Illinois Exhibit 4. It's 21 pages long.
9 And those 21 pages are followed by a page entitled
10 Attestation for Response to Pliura Intervenors' Data
11 Requests dated August 11, 2014.

12 In that attestation, Mr. Rice states that
13 after being first duly sworn under oath, he deposes
14 and states that he has read the responses to Pliura
15 Intervenors' data requests and that the answers made
16 therein are true, correct and complete to the best of
17 his belief.

18 Do you now reaffirm that attestation?

19 A. I do.

20 Q. Again, only as to facts, is that correct?

21 A. That's correct.

22 Q. Subject to the qualifications you have just
23 expressed, is Exhibit 4 part of your testimony in
24 this case?

1 A. It is.

2 Q. Any corrections?

3 A. There are none.

4 MR. THOMAS: I move for the admission into
5 evidence of Enbridge Illinois Exhibits 1, 2, 3 and 4.
6 And I hereby tender Mr. Monthei for cross
7 examination.

8 JUDGE JONES: Thank you.

9 Are there any objections to the admission
10 into the evidentiary record of Exhibits 1, 2, 3 and
11 4?

12 DR. PLIURA: Yes. Pliura Intervenors
13 respectfully object to the introduction into the
14 record of Applicant's Exhibit 3 and Exhibit 4.

15 Previously, those -- the Applicant had
16 indicated it had no intention of introducing any
17 evidence, other than the original motion that was
18 filed on or around May 19, 2014. That was on a
19 record hearing.

20 Subsequent to that, Applicant filed a reply
21 to Pliura Intervenors' response and Turner
22 Intervenors' response, I believe, and they have now
23 moved to introduce that into the record. While we
24 made -- I guess it's arguable whether one and two

1 were or were not properly disclosed. Clearly, they
2 have indicated that those were the only two documents
3 that they intended to submit into evidence.

4 The data response request three and four
5 were never disclosed. They're not on the record. By
6 their own statement today, they're not part of the
7 administrative record. They haven't even been filed
8 on e-Docket. They are responses made by an
9 out-of-court declarant, Randy Rice, who is not here
10 to even testify about them. It substantially
11 prejudices us and it is unfair to now indicate that
12 they're going to try to introduce this into the
13 record when they previously said they would not do
14 that.

15 For those reasons, we object.

16 JUDGE JONES: Thank you.

17 I imagine there may be some response to
18 that. However, it's not going to happen right now.
19 We need to keep moving along. It's also not clear to
20 me whether there will be cross examination on
21 Exhibits 3 and 4 or other DR responses.

22 So rather than trying to rule on -- take
23 more argument on Exhibits 3 and 4 and then attempt to
24 rule on them in advance of some other things that may

1 put them into play in some fashion, I will hold off
2 on any rulings on Exhibits 3 and 4.

3 There appear to be no -- I would also note,
4 any time you get into questions about whether
5 something was beyond what was agreed to is a little
6 tricky, and so it requires a little special attention
7 as to what actually falls within, and without the
8 boundaries of something that I think everyone agrees
9 was the subject of an agreement at the prehearing
10 conference. Something the parties agreed to. So
11 now, when you have a situation where now one party
12 says that's not what we agreed to, the other says,
13 well, I disagree. That, as I say, involves some -- a
14 little extra level of consideration. But that won't
15 happen right at this minute.

16 With respect to Exhibits 1 and 2, more
17 specifically, Enbridge Illinois Exhibits 1 and 2,
18 that's how you want those labeled, is that right?

19 MR. THOMAS: Correct.

20 JUDGE JONES: Let the record show those are
21 admitted into the evidentiary record.

22 Are they being offered -- it's not
23 completely clear to me what exactly is being offered
24 with respect to them, so maybe I should clarify that

1 a little bit.

2 Are they being offered with respect to what
3 was affirmed, and that is to the facts that are
4 contained in them, or are they being offered in some
5 other fashion?

6 MR. THOMAS: No. As to the facts, I guess,
7 your Honor, our thought was to be fair to all the
8 parties concerned, we were standing on these
9 documents as our affirmative case. They contain both
10 legal and factual arguments. If we were going to
11 simply say that's it, then we wouldn't have to put up
12 any witness, I suppose.

13 But we believe that the parties would want a
14 chance to cross examination. So he's here to attest
15 to the facts and to be cross examined on the facts.

16 JUDGE JONES: So in terms of what is
17 actually being offered into the evidentiary record,
18 is that intended to apply to the facts that are set
19 forth therein or are they intended to apply to
20 something else?

21 MR. THOMAS: I guess, just to clarify, both
22 of these exhibits are already in the record. They
23 were filed on e-Docket.

24 JUDGE JONES: Well, they're not in the

1 evidentiary record.

2 MR. THOMAS: That is right. And that's why
3 we had them admitted today.

4 JUDGE JONES: Right.

5 MR. THOMAS: The only point about stressing
6 the facts therein is that Mr. Monthei is not a
7 lawyer. As you know, if you read these documents,
8 there are some legal arguments, as well as factual
9 arguments. We stand behind those legal arguments.
10 But Mr. Monthei, not being a lawyer, cannot opine as
11 to the correctness of those legal arguments.

12 JUDGE JONES: Well, the second exhibit,
13 number two, that contains some attachments and has
14 always contained some attachments. And those are
15 being offered along with it?

16 MR. THOMAS: Yes, they are.

17 JUDGE JONES: Thank you.

18 Let the record show Enbridge Illinois
19 Exhibits 1 and 2 are admitted into the evidentiary
20 record as filed on e-Docket on May 19, 2014, with
21 respect to Exhibit 1; and on June 13, 2014, with
22 respect to Exhibit 2.

23 Without getting any more specific about it,
24 they are admitted into the evidentiary record subject

1 to the indications in the record this morning to the
2 affect that the witness is not attesting to any legal
3 content therein.

4 (Enbridge Illinois Exhibits 1 and 2
5 were admitted into evidence at this
6 time.)

7 JUDGE JONES: Anything further on that?

8 (No response.)

9 JUDGE JONES: Thank you.

10 All right. I believe --

11 MR. TURNER: Your Honor, I'm sorry. I do
12 have a question.

13 JUDGE JONES: Sure.

14 MR. TURNER: I just want to inquire about
15 here -- I am sorry to be taking the time to do this.
16 But the responses to the data requests were
17 supplemented twice by an e-mail. And I was under the
18 impression that those supplements were going to be
19 verified today. Now, if I misunderstood that, that's
20 a different story.

21 JUDGE JONES: Mr. Reed.

22 MR. REED: Thank you, your Honor. This is
23 Darryl Reed.

24 We did not move for the admission of the

1 supplemental responses. However, our witness is here
2 today to attest to the veracity contained therein.
3 To the extent that counsel for the Intervenor want
4 to cross examine our witness on those matters, he is
5 here for that purpose. But once again, we did not
6 move them into the record, but they are fair game for
7 cross examination.

8 MR. TURNER: Thank you, Mr. Reed.

9 Your Honor, I just want to make one more
10 comment. I think if we do cross examine, then we're
11 going to enter that area where people are going to
12 have to either sign or leave. It's going to enter
13 into your proprietary.

14 MR. REED: We have no objection to that,
15 your Honor. Once we get to that point, we will take
16 the appropriate steps to ensure the confidentiality
17 of the information is maintained.

18 JUDGE JONES: Thank you.

19 Well, with respect to the DR responses, the
20 ones that were already offered, as well as the
21 others, we will really just have to see what develops
22 on cross examination and beyond with respect to
23 whether some or all of those would be eventually
24 destined for the evidentiary record.

1 It's certainly the case that in many
2 proceedings, one party or another will offer some of
3 the DR responses into the evidentiary record. It is
4 pretty common for that to happen. And it's also
5 pretty common for cross examination to occur with
6 respect to DR responses. I think we will be hearing
7 some of that soon. And there are a large number of
8 DR responses that are placed into the evidentiary
9 record by agreement or stipulation of parties, which
10 in many instances is done for the purpose of saving
11 cross examination time, and it can definitely
12 accomplish that purpose.

13 So those options can remain open. But we
14 will soon see what happens with respect to those DR
15 responses. But at this point, I think we're ready to
16 turn to counsel for Intervenors for their cross
17 examination.

18 Who would like to lead off?

19 MR. TURNER: May it please the Court.

20 JUDGE JONES: Mr. Turner.

21 CROSS EXAMINATION

22 QUESTIONS BY MR. TURNER:

23 Q. Mr. Monthei, I want to ask you about your
24 personal knowledge of what you verified here this

1 morning or affirmed this morning.

2 Do you work in the same program or division
3 as Jerrid Anderson?

4 A. I do.

5 Q. And in relationship to his position, how do
6 you rank?

7 A. Jerrid is a senior director level and I am a
8 vice president.

9 Q. So you're higher?

10 A. Yes.

11 Q. And is there someone in that department
12 higher than you?

13 A. We have a VP now over all U.S. project
14 implementation, major project implementation. So
15 yes, there is one more.

16 JUDGE JONES: Can everyone hear okay? Is
17 your mic on?

18 Again, if anybody is having trouble hearing,
19 just let us know and we'll take care of it.

20 Sorry for the interruption. Next question.

21 Q. (By Mr. Turner) My understanding of your
22 department is that your -- that that department
23 essentially promotes the political acceptance of new
24 projects in the United States rather than being

1 responsible for the engineering and specification and
2 construction or financing of those projects.

3 Am I correct in that?

4 MR. THOMAS: I object to that
5 characterization.

6 Why don't you ask the witness what the
7 department does?

8 MR. TURNER: Well, this is cross
9 examination.

10 MR. THOMAS: But it's actually far aside
11 from these documents. So you are --

12 MR. TURNER: You have --

13 JUDGE JONES: Direct your comments to me,
14 not to you and you.

15 MR. THOMAS: I am sorry. I do object to the
16 characterization, because I believe it's a
17 mischaracterization. And I am simply suggesting the
18 witness be allowed to answer what the department
19 does. And Mr. Turner can then follow up how he
20 wishes.

21 JUDGE JONES: You're certainly entitled to
22 make your objections. The more we have, the longer
23 it will take.

24 MR. THOMAS: I'll try to make very few of

1 them.

2 JUDGE JONES: I am not saying limit them.
3 I'm not saying what to do. But we're about one or
4 two questions into the first witness and we're
5 40 minutes into the hearing. I just state that for
6 what it's worth.

7 Do you need the question read back, sir?

8 THE WITNESS: I do.

9 (Requested portion of the record
10 was read by the Court Reporter.)

11 JUDGE JONES: Do you understand that
12 question, sir?

13 THE WITNESS: Yes, I think so.

14 JUDGE JONES: Are you able to answer it?

15 THE WITNESS: The question and the pretense
16 are not correct.

17 Q. (By Mr. Turner) Isn't it true that your
18 department has nothing at all to do with engineering
19 of the new pipeline construction project?

20 A. That's not correct.

21 Q. What is it your department does with respect
22 to engineering?

23 A. We manage the entire project implementation,
24 including management of the engineering for the

1 project. We hire the engineering firms or we assign
2 Enbridge engineering staff to provide that
3 engineering service.

4 Q. What is the name of the engineers for the
5 staffs that work for Enbridge?

6 A. We have a number of our own engineering.
7 And in this firm, it's UniversalPegasus out of
8 Houston, I believe.

9 Q. Aren't you referring to surveyors?

10 A. They will do a combination of services,
11 including surveying, possibly.

12 Q. Did they also provide the temporary team of
13 land agent communicators with the landowners?

14 A. They could provide a variety of services for
15 Enbridge in support, and including land service. I
16 don't know specifically if that's the case here.

17 Q. Do you know who did provide that, the land
18 agent communicator services?

19 MR. THOMAS: Your Honor, I am sorry. I'm
20 going to object.

21 The focus of this proceeding is on the
22 change from 36 inches to 24 inches. Just as these
23 questions appear to be directed to land agents and
24 communications with land agents, which is really the

1 question in the eminent domain docket or in
2 condemnation proceeding, neither of which are
3 involved here.

4 JUDGE JONES: Response.

5 MR. TURNER: Oh, your Honor, that's the last
6 question on that line. It's not at all focused on
7 land agents. I am trying to figure out what this
8 gentleman does.

9 In the other proceeding, I took the
10 discovery deposition of Jerriid Anderson and got
11 completely different answers. So I am a bit
12 surprised. And I was just probing to see what it is
13 that this gentleman does.

14 MR. THOMAS: For the record, that deposition
15 of Jerriid Anderson was in connection with the
16 condemnation proceeding.

17 JUDGE JONES: State your last question in
18 that line.

19 MR. TURNER: Yes.

20 JUDGE JONES: Do you recall the question?

21 THE DEPONENT: No. I am sorry.

22 JUDGE JONES: Miss Reporter, would you read
23 the question back, please?

24 (Requested portion of the record

1 was read by the Court Reporter.)

2 JUDGE JONES: I'll allow the question

3 identified as the last in that particular line. It's

4 an attempt to define the scope of this witness's role

5 in the overall project.

6 Do you understand the question, sir?

7 THE WITNESS: I do.

8 JUDGE JONES: Do you have -- please answer.

9 THE WITNESS: I do not know the name of the

10 firm.

11 Q. (By Mr. Turner) Does someone in your

12 division select the pipeline grade, the

13 specifications of the pipeline to be used and the

14 strength of the pipeline?

15 A. Yes. That's all part of the engineering

16 function in the pipeline design. They would do that

17 work, yes.

18 Q. And then who in your department does that?

19 A. Well, that would fall under -- for Southern

20 Access Extension, it falls under Randy's group. He's

21 got a manager that has accountability to work with

22 the engineering firm to deliver that.

23 So that falls under Randy Rice, who will

24 have a manager who will oversee that engineering

1 function.

2 Q. But you don't know who the engineering firm

3 is?

4 A. That's not what I said.

5 Q. Do you know who the engineering firm is?

6 A. UniversalPegasus.

7 Q. And that firm is from Texas?

8 A. I am sorry.

9 Q. That firm is from Texas?

10 A. That's correct.

11 Q. And that's a general contractor of Enbridge?

12 A. It's an engineering contractor for Enbridge.

13 Q. And it's that firm that selected the

14 specifications for the pipeline used for the SAX?

15 A. The engineering firm doesn't have latitude

16 to select specifications, so --

17 Q. Who does select the specifications?

18 A. Well, they're either code driven or there is

19 an Enbridge standard that they have to work to. And

20 those would define -- either be the code requirements

21 or it would be the Enbridge standard or both.

22 Q. And who in your department selects between

23 the two alternatives?

24 A. Well, that's an engineering function to

1 determine which would apply to any specific design.

2 Q. I am trying to find out who the engineer is
3 that does that. Please, tell me.

4 A. Well, it depends on the question who does
5 the work.

6 Q. The work of selecting the pipe. The
7 specifications.

8 I know there are private Enbridge
9 specifications and there are more widely
10 industry-wide sets of specifications. And you have
11 identified both of those here today.

12 Who selects --

13 A. So the engineering firm, UniversalPegasus,
14 will select whatever design criteria from the
15 specifications and the code that's appropriate for a
16 given application.

17 Q. And there is no engineer anywhere in the
18 Enbridge system or Enbridge employee that's involved
19 in that activity?

20 MR. THOMAS: I object to the
21 mischaracterization of his testimony.

22 JUDGE JONES: Miss Reporter, could you read
23 the question back, please?

24 (Requested portion of the record

1 was read by the Court Reporter.)

2 JUDGE JONES: This is cross. And if he
3 doesn't agree with the characterization, he can tell
4 us.

5 MR. THOMAS: That's fine, your Honor.

6 THE WITNESS: Yeah, no, I don't. I don't
7 agree with that statement.

8 Q. (By Mr. Turner) Okay. And tell me the name
9 of the Enbridge employee that selects the
10 specifications.

11 A. Well, again, it depends on the specific
12 specification that you're talking about. There's a
13 lot of people who have numerous specifications that
14 talk about various elements of the design.

15 But in terms of Enbridge standard, that's
16 handled by our engineering group. And the
17 engineering director -- director of engineering would
18 have accountability over that standard. And that
19 would be Vic Coaly (sp.).

20 Q. That's not under your supervision, is it?

21 A. No.

22 Q. And in terms of the comments made in
23 Exhibit 1 of your testimony about the pipeline
24 specification standards that you have verified, do

1 you know that the standards stated are accurate?

2 A. I am sorry. Could you state that again? Do
3 I know that they're what?

4 Q. In your testimony in Exhibit 1, there is
5 reference made to -- that describes the pipe.

6 Are you familiar with that?

7 A. Yes. There's several places where the pipe
8 is described.

9 Q. I am not talking about the diameter now. I
10 am talking about the actual specification of the
11 pipe.

12 MR. THOMAS: Would you direct the witness to
13 the page you have?

14 THE WITNESS: Yeah. Because there's several
15 places where we talk about that.

16 Q. (By Mr. Turner) Okay. Well, tell me the
17 first place that it is mentioned then and I'll ask
18 you about that.

19 MR. THOMAS: Your Honor, it does seem to me
20 the witness has been brought here under sort of
21 exigent circumstances here. I don't think it's too
22 much to ask for cross examination that if he has a
23 particular set of specifications in mind that he
24 identify those for the witness; otherwise, we'll go

1 back and forth and spend a lot more time.

2 MR. TURNER: Your Honor, I'd be glad to do
3 that.

4 Q. (By Mr. Turner) I refer you to page six,
5 line one, line two, line three, line four, line five.

6 My question will be -- and I'll restate one
7 to help clarify things. How do you know that the
8 descriptions given of those lines are true and
9 correct?

10 A. Okay. So these are descriptions of the
11 piping material used in the 24-inch pipeline. They
12 talk about the grade of the steel, they talk about
13 the API standard -- American Pipeline Institute
14 standard. They talk about the wall thickness, all of
15 those. Wall thickness would be an engineering
16 calculation. This is the API standard is just
17 following good engineering standard.

18 So all of this would be done by -- this all
19 would have been selected by a registered engineer who
20 is knowledgeable in those areas. The fusion bond
21 anti-corrosion coating elements would be part of an
22 Enbridge standard. So that engineer would refer to
23 Enbridge.

24 So it's a combination of licensed engineers

1 performing this selection by UniversalPegasus, as
2 well as those engineers following standards developed
3 by our own engineering standards group under Vic
4 Coaly.

5 Q. What you just described in response to the
6 last question does not occur within the department
7 that you are responsible for, is that correct?

8 A. Part of those functions are and part of them
9 are not.

10 Q. Do you have personal knowledge that the
11 descriptions given there are accurate?

12 A. I would trust the judgment of our staff are
13 fully qualified to select the engineer and manage the
14 engineering such that, in fact, this is a prudent
15 design. But no, I did not personally do the design
16 work.

17 Q. I am not asking if the specifications are
18 prudent. I am asking if the stated specifications
19 here are accurately stated and do you have any
20 knowledge that it is accurately stated?

21 A. I am sorry. I am not following the
22 question.

23 Q. Okay. It says here that the 24-inch pipe is
24 manufactured as API 5L Grade X70 steel pipe.

1 Is that the pipe that has been delivered to
2 central Illinois for construction of the SAX line?

3 A. I believe it has.

4 Q. And have you inspected the pipe that has
5 been delivered?

6 A. I personally have not inspected that pipe.

7 Q. How can you then verify today in your
8 testimony that the pipe that has been delivered is
9 the pipe that is described that I just read to you?

10 A. We rely on both inspectors -- we rely, first
11 of all, with our procurement folks to order the
12 correct pipe, which would have been this grade as
13 shown. We rely on quality control inspectors during
14 the manufacturing process to validate that and verify
15 it. And then we rely on receipt inspectors to
16 confirm it. But I don't physically do that work. I
17 rely on those staff members to do that work.

18 Q. What are the names of the individuals that
19 perform those three functions and did so for the pipe
20 that was delivered to central Illinois for
21 construction of the SAX line?

22 A. There would be a number of them. And I am
23 sorry, I don't know their names.

24 Q. Have you received any communication from

1 those numbers of individuals that they have verified
2 that the pipe delivered matches up here?

3 A. No. I would not receive those kinds of
4 reports, generally.

5 Q. Later on in that page, there is a reference
6 made there. We're still on page six. Near the end,
7 it says: Thus, in accord with the Enbridge policy,
8 etc.

9 Do you see that?

10 A. Yes.

11 Q. Now, the suggestion here in your testimony
12 is that the maximum operating pressures are going to
13 be reduced for this version of the SAX compared with
14 the version of the SAX that was presented in the 2007
15 and '08 testimony, is that correct?

16 A. I don't recall a reduction in -- my answer
17 is I don't know the answer to that question.

18 Q. Do you recall whether there are more pumps
19 being proposed for the modern version of the SAX line
20 as compared with the obsolete version of the SAX
21 line?

22 MR. THOMAS: I object to that
23 characterization.

24 MR. TURNER: Well, that's a little

1 argumentative. I apologize. I apologize. I'll quit
2 acting that way.

3 Q. (By Mr. Turner) Are you familiar with a
4 proposal for the current construction which has more
5 pumps along the line than was proposed for the SAX
6 line that was the subject matter of evidence in 2007
7 and 2008?

8 A. I am having difficulty following your
9 question. I am not sure what the question is. I
10 understand what you're saying, but I don't understand
11 the question.

12 Q. One of the Intervenors I represent has a
13 farm where Enbridge is proposing to build a lane
14 across the farm where none exists, and in the middle
15 of it, put a pump. That didn't exist back in 2007
16 and '08.

17 And I am asking if you are installing more
18 pumps for this line for the proposed construction
19 that you want to occur as soon as possible.

20 A. Okay. I am still not -- I am sorry. I just
21 don't understand what you're asking.

22 Are you asking me are we having pumps?

23 Q. Well, obviously, you're going to have pumps.
24 I know you are.

1 A. Yes.

2 Q. But are you having more pumps?

3 A. More pumps than what?

4 Q. Than was proposed in the evidence in 2007
5 and '08.

6 A. Yeah, I can't answer that question. I don't
7 know.

8 Q. Do you have any explanation then why the
9 Hacker Farm in McLean County is a specified location
10 for pumps for the construction you're proposing now
11 and was not in the plan presented in 2007 and 2008?

12 MR. THOMAS: I object. This goes beyond the
13 scope of his testimony. That, essentially, you're
14 asking an eminent domain claim on a proceeding that
15 deals with a change in pipe from 36 to 24 inches.

16 None of this testimony deals with particular
17 farms or particular pumps or where those pumps are
18 located on a particular farm.

19 MR. TURNER: Your Honor, could I?

20 JUDGE JONES: You may respond.

21 Q. (By Mr. Turner) Right at the point where I
22 have asked you to look in this testimony, it states
23 that, in describing this project: Although average
24 operating pressure may be lower.

1 And isn't one of the major factors that
2 determines operating pressure the number of pumps
3 that are in the system?

4 A. That's an awkward question, because what
5 determines the amount of pressure in the line is the
6 volume of the oil going through the line. There
7 could be a number of bi-pumps that could be running
8 or may not be running, depending on the volumes. So
9 the number of pumps doesn't mean anything.

10 Q. Okay. Thank you for that answer. And I
11 want to ask you about that.

12 In general, it is true that along the route,
13 there will be, periodically, pumps that Enbridge
14 installs that help transport the product inside the
15 pipeline to its destination, is that correct?

16 A. Yes.

17 Q. And to clarify, in my mind, what you have
18 just said about the pumps, whether they're on or not,
19 isn't it true that if you don't have shipping for a
20 full capacity, that you don't turn on all of the
21 pumps?

22 A. That may be true.

23 Q. May be or may -- could you explain why it is
24 only maybe true?

1 A. Because you have the option with these
2 variable frequency drive pumps to throttle them back.
3 So you can make the decision to throttle back or turn
4 it off.

5 Q. Thank you. Excellent.

6 You understand, I am just a simple farm boy
7 here. And all this high class stuff involved in
8 these pipelines, I am still learning. And I have
9 been trying to study this since 2007. And I have a
10 ways to go, so I appreciate your help here.

11 MR. THOMAS: Mr. Turner, can I suggest this
12 so the record is accurate.

13 Are you talking about pumps or are you
14 talking about valves?

15 MR. TURNER: Pumps. I am talking about
16 pumps.

17 MR. THOMAS: Well, I think not, sir. But go
18 ahead.

19 Q. (By Mr. Turner) Isn't the effect of
20 throttling back the pumps or shutting off the pumps
21 to lower the capacity of the 24-inch SAX pipeline?

22 A. Okay. Again, I am not following the
23 question. I understand the part about --

24 Can you just tell me the question again?

1 Q. Sure.

2 You mentioned that the pumps can be

3 throttled back, which means they don't pump as hard.

4 A. That's right.

5 Q. And you also mentioned maybe a pump is shut

6 off completely.

7 A. That's correct.

8 Q. When either or both of those events occur,

9 doesn't that tend to reduce the capacity of the SAX

10 pipeline?

11 A. Yes.

12 Q. And it is expressed in your testimony that

13 the capacity of the SAX pipeline is 300,000 barrels

14 per day, as you presently have it planned and are

15 proposing for the project?

16 A. That's correct.

17 Q. Now, what is -- if we turned off or

18 throttled down pumps, could you give us a range of

19 what the capacity might end up being?

20 MR. THOMAS: I object that that's a

21 hypothetical question. He's not qualified as an

22 expert in this proceeding.

23 JUDGE JONES: Overruled.

24 Do you understand the question?

1 THE WITNESS: I do.

2 JUDGE JONES: Please answer.

3 THE WITNESS: So the answer is I can't tell
4 you off the top of my head. We would develop various
5 analysis based on the various pumps and the various
6 stages they would be. We would develop curves and
7 computer modeling to tell this.

8 I can't second guess what that computer
9 modeling would tell us. There's so many variations
10 on it.

11 Q. (By Mr. Turner) Have you had experience
12 personally with seeing the computer models that
13 you're describing applied to another 24-inch pipeline
14 that was primarily carrying light crudes?

15 A. I can't recall a 24-inch pipeline with light
16 crudes where I have been involved in the computer
17 modeling, specifically.

18 Q. Do you believe that it would be accurate
19 that sufficient pumps could be throttled back so that
20 the capacity goes from 300,000 to 200,000 barrels per
21 day?

22 A. Yes.

23 Q. In your testimony, there is quite a bit of
24 explanation about a shift in the focus of the project

1 for the SAX to the transportation of light product.

2 And my question -- one of my questions about
3 that is that many of the things that you describe
4 have existed for either many months prior to the date
5 of your Motion to Reopen Case 07-0446 or perhaps even
6 years before that.

7 Why was it that you waited until May 29,
8 2014, to file the Motion to Reopen?

9 A. As opposed to doing it when? Just want to
10 make sure I understand what you're asking.

11 Q. I believe I am accurate -- and people will
12 correct me if I am misleading you. But I believe the
13 Motion to Reopen -- the Motion to Reopen. I was
14 wrong. The Motion to Reopen apparently was filed May
15 19, 2014.

16 Why wasn't it filed, say, six months before
17 that?

18 A. My understanding is that we didn't
19 understand the need to file that. That there had
20 been general discussions about the pipe size to a
21 number of folks. That there was also an
22 understanding that we were doing market analysis. We
23 were doing open seasons with various producers to
24 determine the demand. And we were trying to finalize

1 the pipeline capacity based on those market demands.
2 Once that capacity was finalized, then we would have
3 made that selection.

4 So we did talk, certainly, at least for the
5 past year, a number of times, about various sizes,
6 including 24 and 36 and even 30. All dependant upon
7 what the market was going to demand, was going to
8 dictate.

9 Q. There were two open seasons conducted for
10 this SAX specifically by Enbridge, were there not?

11 A. That's correct.

12 Q. And prior to the first open season, Marathon
13 had already made a commitment as anchor shipper for
14 the SAX. That's correct too, isn't it?

15 A. I don't know. I hadn't heard that.

16 Q. Do you believe that to be wrong?

17 A. I don't know the answer to that question.

18 Q. Do you know what the results were -- and I
19 won't ask you to get into detail right now. But do
20 you know what the results were of the first open
21 season?

22 A. I don't recall. I don't recall the
23 discussion on it.

24 Q. Do you know what the results were of the

1 second open season?

2 A. I don't have firsthand information. I have
3 secondhand and thirdhand information on those
4 discussions. I was not involved in the open season
5 work.

6 Q. So based on second or thirdhand information,
7 you don't know the results of the first, but you do
8 know the results of the second open season?

9 A. No, I don't think that's what I said. I
10 said I wasn't involved in the open season.
11 Specifically, on the second open season. I have
12 limited knowledge based on second and thirdhand
13 information from our business development folks.

14 Q. Are you aware of a third open season that
15 occurred?

16 A. I have no knowledge of that.

17 Q. Are you aware of an open season occurring
18 for a pipeline that Enbridge is proposing south of
19 Patoka, which it requested invitations for the SAX
20 also?

21 A. I have no knowledge of that.

22 Q. When an open season is conducted by
23 Enbridge, isn't it true, Enbridge takes it pretty
24 seriously and makes sure all potential shippers that

1 they're aware of are notified that an open season is
2 underway?

3 A. Yes.

4 Q. And Enbridge would have a real good
5 understanding about who the available shippers were?

6 A. Yes.

7 Q. And the results of the open season are a
8 good indication of the demand by shippers for the use
9 of the SAX?

10 A. It is.

11 Q. Now, when I ask you about the timing of the
12 filing of the Motion to Reopen, in your testimony,
13 you mentioned there was discussions and an
14 understanding about the need to do it, is that
15 correct?

16 I don't want to put words in your mouth.
17 But let me restate that question here. I apologize.

18 Is one of the reasons that the Motion to
19 Reopen the Case 07-0446 was because of determination
20 of whether that ICC case needed to be reopened in
21 order to change the pipeline diameter from 36 to
22 24 inches?

23 A. Okay. I guess I am not understanding that.
24 I am sorry.

1 Q. I apologize.

2 Prior to May 19, 2014, do you recall there
3 being discussions about the need to reopen the case
4 in order to have the Certificate of Good Standing
5 existing in that case changed from 36 inches to
6 24 inches?

7 A. I really wasn't -- I was not involved in any
8 such discussions. I don't -- prior to the filing, I
9 just wasn't involved in any of those discussions, so
10 I am not aware of any of those.

11 Q. And then to follow up with that, you were
12 then not involved in any way then with the
13 preparation of the Motion to Reopen?

14 A. I was certainly aware that it was ongoing,
15 yes.

16 Q. When you say ongoing, that it had been
17 filed?

18 A. That it -- and when some of the preparatory
19 work was starting, yes.

20 Q. Do you know who handled the determination on
21 behalf of Enbridge about the business decision to
22 file the Motion to Reopen the case?

23 MR. THOMAS: I just want it to be clear.
24 You're not asking for legal advise that was given as

1 to reopen?

2 Q. (By Mr. Turner) Please exclude any
3 communication between Enbridge and counsel.

4 A. So the question then is what?

5 Q. What person at Enbridge made the business
6 decision -- not the legal decision, but what person
7 at Enbridge made the business decision to allow the
8 Motion to Reopen?

9 A. Well, our director, Randy Rice, would have
10 been on top of those issues and some of the dialogue.
11 So he would have brought that forward to management
12 with a recommendation. So essentially, it would be
13 the director, Randy Rice, from a business
14 perspective.

15 Q. When you say the management, he's not
16 bringing it to his management, he's bringing it to
17 somebody else's management, isn't he?

18 A. No. He would be bringing it to me first.

19 Q. Do you recall him bringing it to you?

20 A. Randy and I meet several times a week. So
21 specifically, I don't remember exactly the context of
22 when that was first brought up.

23 Q. There are a number of explanations given in
24 your testimony about economic conditions during the

1 period between 2007 and the time you filed the Motion
2 to Reopen. Are you aware of whether there have been
3 any additional refiners of crude oil petroleum that
4 have gone into business and would somehow affect the
5 economic conditions and demands for the SAX pipeline?

6 A. I am not involved in that part of our
7 business. We have business development experts that
8 keep track of that and monitor that. So I do not
9 normally get involved in that.

10 Q. Is it your testimony here today that the
11 economic reasons supporting the present plan for this
12 SAX pipeline is something that you're simply not
13 aware of?

14 A. No, that's not what I said.

15 Q. Okay. Isn't the demand for the use of a
16 pipeline determined by parties wanting to have crude
17 oil refined?

18 MR. THOMAS: Just so the record is clear,
19 what parties are you talking about?

20 MR. TURNER: Well, whoever ships on
21 Enbridge. We have asked that and we don't get any
22 answers from you, so I can't tell you by name. One
23 of them is obviously Marathon.

24 MR. THOMAS: I have no objection to his

1 question.

2 THE WITNESS: So can you restate the
3 question? And I am sorry.

4 Q. (By Mr. Turner) Isn't the demand for the
5 use of a crude oil pipeline determined by the
6 shippers that want to have product refined by
7 refinery?

8 A. I believe so.

9 Q. And so wouldn't the change in economic
10 circumstances between the period in 2007 and '08,
11 when the original SAX plan was presented, and the
12 economic conditions that existed on May 19, 2014,
13 wouldn't the shipper demand and refining demand shape
14 the changes in economic condition?

15 A. I think you're asking does it -- it's kind
16 of the chicken and the egg thing, which is which, if
17 I understand the question.

18 Q. Okay. Then follow up. Explain the chicken
19 and egg concept in your mind, please.

20 A. Well, I am not sure if you're saying that
21 the shippers, basically, ship because there is need
22 on the refinery side or do the shippers ship and then
23 the refiners react.

24 I am not sure what you're asking there.

1 Q. Of the two alternatives you just stated,
2 does one or both of them have a role in determining
3 the demand for the use of a pipeline?

4 A. I am sure it does. I am sure they both do.

5 Q. And would one or both of those been central
6 and the change of economic circumstances between the
7 time the SAX was originally proposed and May 19,
8 2014?

9 A. I am sorry. So you're asking would they
10 change or have they changed?

11 Q. Yes.

12 A. They have changed, yes.

13 Q. Now, what changes in refining demand
14 occurred?

15 A. Well, specifically, that's an area outside
16 my expertise. Our business development folks, again,
17 would monitor that.

18 Q. So in terms of refining demand, your
19 testimony here today is that you don't have any idea
20 what influence refining demand had on the decision by
21 Enbridge to change the plan that it's currently
22 wanting to construct?

23 A. That's what I am saying to you, yes.

24 Q. Are you familiar enough with the industry to

1 know if there have been any increases or reductions
2 in refiners that could be serviced by the proposed
3 SAX between the period of time when you first
4 proposed it in 2007 and May 19, 2014?

5 A. I do know that there have been changes, but
6 I don't know enough about it to really tell you what
7 they were.

8 Q. Isn't it fair to say that the description
9 given here to the recession that occurred, it began
10 in the fall of 2008, didn't have anything to do with
11 refining or shipping of crude oil?

12 MR. THOMAS: Would you direct the witness to
13 the page that you're referring to?

14 MR. TURNER: Yeah. I am looking for it.

15 MR. THOMAS: Thank you.

16 Q. (By Mr. Turner) Okay. On page three,
17 paragraph three, line three, in quotations is the
18 description or name Great Recession. Let me restate
19 the question.

20 Didn't that Great Recession pertain to the
21 first thing of a bubble relative to home mortgages
22 and had nothing to do with the transportation or
23 refining of crude oil in the United States?

24 MR. THOMAS: Just, your Honor, if we could

1 have a clarification.

2 Are you asking about the cause of the
3 recession or the effects of the recession?

4 MR. TURNER: Well, somebody put the word
5 Great Recession in here. I want to know whether it
6 has any pertinence at all to this or whether it's a
7 meaningless comment. That's what I am trying to get
8 to. I don't know whether it's cause and effect or
9 the chicken and the egg.

10 THE WITNESS: What I do know is that during
11 the recession, demand for crude products in the U.S.
12 dramatically decreased.

13 Q. (By Mr. Turner) And in what years did that
14 occur?

15 A. It was approximately 2008, 2009, that time
16 period.

17 Q. Was the production of gasoline during that
18 period lower than the period before the beginning of
19 the Great Recession?

20 A. Yeah, I am not an economist, so I can't tell
21 you about the gas production. I can speculate is all
22 I could do.

23 Q. Well, considering that you're not an
24 economist, how do you know then that there was a

1 reduction?

2 A. Yeah, we monitor flow rates of our pipeline
3 systems. And periodically, I do attend meetings and
4 I know what our throughputs were or at least I had
5 heard different reports on throughputs, so they were
6 down.

7 Q. But you don't know what years?

8 A. It was approximately in that 2008, 2009
9 timeframe.

10 Q. Are those throughputs back then after that
11 to where they were prior to the Great Recession?

12 A. Yes.

13 Q. So the throughputs then weren't an issue
14 that was pertinent in terms of Enbridge changing its
15 concept from the original SAX pipeline to the one
16 that's now being presented and wanting to be
17 constructed, is that correct?

18 A. Well, the economic conditions that the --
19 the shipper conditions that would have supported a
20 400,000-barrel per day SAX pipeline existed before
21 the recession. After the recession, those -- there
22 was no support or there was not adequate support to
23 support volumes in that number.

24 So there was a change there during the

1 recession. It could have been due to a number of
2 factors in terms of changes in refineries, change in
3 other factors.

4 Q. The basis for your reference to
5 400,000 barrels per day for this SAX prior to the
6 Great Recession is based on what?

7 A. That would have been information coming from
8 our business development folks.

9 Q. Do you have a name of a business development
10 folk?

11 A. Yes. Paul Fisher would be the vice
12 president in charge of that presently.

13 Q. And where is his office?

14 A. His office is in Calgary.

15 Q. Is it at the headquarters of Enbridge, Inc.?

16 A. It is.

17 Q. And did he tell you that prior to the Great
18 Recession, the demand for this SAX was 400,000
19 barrels per day?

20 A. I wasn't involved in this area of our
21 business back in that timeframe, so I wouldn't have
22 had that conversation with him specifically.

23 Q. So you don't know whether there was a
24 400,000-barrel per day demand prior to the Great

1 Recession or not, do you?

2 A. In order to justify and take the pipeline as
3 far as they did, there would have been a
4 justification for it. But I have not gone back to
5 the records to verify that.

6 Q. And so what supports your testimony here
7 today about 400,000 is your confidence in your
8 company to always make correct decisions, is that
9 correct?

10 A. That's kind of a strange question the way
11 you worded it. Can you give me that question again?

12 Q. Why don't I ask you if you kind of get the
13 general gist of it, and you tell me how you would
14 phrase it.

15 A. Well, we do have a very competent business
16 development group. And they do monitor the crude
17 markets with producers throughout North America. And
18 they would have identified a demand. And there is a
19 process that they would have gone through in order to
20 validate that, that demand.

21 And then based on that, they would come up
22 with several scenarios for how to address that
23 demand, particularly if it's crude needed to be
24 transported from one area to the next. Once they did

1 that, we would develop more detailed planning, and
2 ultimately, costs for that.

3 Q. And even though you don't have personal
4 knowledge of it --

5 A. Of that study, that's right.

6 Q. Even though you don't have personal
7 knowledge of it, you believe that if there was a
8 decision made prior to the Great Recession of 2008,
9 you believe it would have been a real good one?

10 A. I am not sure if I agree with the wording.
11 I am not sure if I would phrase it quite like that.

12 I believe there was good justification on
13 the demand and that a prudent decision was made on
14 how to move that crude based on that understanding of
15 that demand.

16 Q. And assuming that did occur, isn't it true
17 that your motion says it was dead wrong?

18 A. I believe our testimony says that the --
19 those conditions have changed. So at the time that
20 analysis was made, it was probably correct. But
21 those conditions have changed.

22 Q. And wasn't it true that that proposal of
23 Enbridge in 2007 was opposed by some intervening
24 farmers?

1 MR. THOMAS: Your Honor, may I ask a
2 clarification here?

3 These questions seem to be directed to the
4 whole question of the certification of the line in
5 the first place. It is our belief that that is
6 really beyond the purpose of this proceeding.

7 I have not objected so far, but we're going
8 pretty far field from the question of 36-inch to a
9 24-inch line.

10 JUDGE JONES: I do not think I heard an
11 actual objection there.

12 MR. THOMAS: I do object.

13 JUDGE JONES: Well, you could have a minute
14 ago. You may yet. But subsequent questions. But
15 I'll stick with ones that were actually objected to.

16 MR. TURNER: I'll ask another question if I
17 may, Judge.

18 JUDGE JONES: Go ahead.

19 How many more questions do you have in this
20 line?

21 MR. TURNER: Judge, I am just trying to see
22 if this witness knows anything at all about the
23 motion. I am just going through just a couple more.
24 And then I want -- what I want to suggest, out of

1 politeness and everything, is then there's going to
2 be a series of questions that I believe might be
3 considered -- and I could mention the topics -- I am
4 going to ask, if I could. And I assume -- and I have
5 no objection to it being in camera.

6 I want to ask about the shipping volumes,
7 etc., and then I want to ask about a certain
8 agreement between the anchor shipper and Enbridge.
9 And I assume that maybe they're going to say
10 that that's proprietary. If not, I will ask about
11 that right now.

12 MR. THOMAS: We would -- from your
13 description, it sounds like we would need to go in
14 camera.

15 MR. TURNER: Just give me a second and then
16 I'll end, Judge. Let me take a couple more quick
17 reviews here and then I'll be done, except for the in
18 camera part and the proprietary part.

19 JUDGE JONES: Thank you.

20 Q. (By Mr. Turner) I want to ask you about the
21 landowners. At the top of page five, line one,
22 landowners are called hold outs.

23 I have noticed over the years that it seems
24 that landowners are given somewhat of a negative

1 description. Can you explain why that occurs?

2 A. Okay. Again, I am sorry. I don't
3 understand the question.

4 Q. Why does Enbridge -- or why did this motion,
5 and now your evidence, call landowners hold outs
6 instead of landowners?

7 A. Well, in the context of page five, they were
8 describing a specific group of landowners who have
9 not yet signed the easement agreements.

10 Q. They are unsigned landowners, aren't they?

11 A. They are.

12 Q. In other Enbridge documents, they have been
13 called a lot worse than hold outs.

14 What attitude exists in Enbridge for this to
15 occur?

16 MR. THOMAS: I object to the question. It
17 is far beyond the purpose of this proceeding.

18 MR. TURNER: Your Honor, I'll be quick. I
19 will withdraw that question and I'll ask another one.

20 Q. (By Mr. Turner) When the word hold out is
21 there, is that meant in a pejorative sense?

22 A. It is not meant in any kind of sense other
23 than to describe landownership not yet agreed to in
24 terms of the conditions of the lease of the

1 easements. There is no opinion in terms of intended,
2 other than these have signed; these have not.

3 Q. Do you have any understanding as to a
4 motivation for a landowner to remain unsigned or to
5 be what you call a hold out?

6 MR. THOMAS: Again, I object, your Honor.

7 This is an eminent domain question. It is a
8 condemnation question. The top of page five is
9 merely a description of the fact that that occurred
10 and there was a whole proceeding on it. This seems
11 to be far field of what we should be focusing on here
12 today.

13 JUDGE JONES: Response.

14 MR. TURNER: The word hold out was used.
15 And having had this long-term history and this case,
16 and including filings in this case by Enbridge, I
17 know there seems to be some negativism that Enbridge
18 holds for landowners.

19 I am trying to figure out the basis for
20 that. And the reason is, I believe every single
21 landowner is an innocent party who hasn't done a darn
22 thing wrong and is a victim of condemnation. They
23 just happen to have land in the wrong place at the
24 wrong time.

1 MR. THOMAS: If I may, your Honor. I think
2 he just made my point. He's making a condemnation
3 point, which is another set of proceedings before the
4 circuit court even as we speak. And much of this was
5 also covered in the eminent domain proceeding.

6 JUDGE JONES: There is a question back there
7 somewhere.

8 Miss Reporter, can you identify it fairly
9 easily?

10 (Requested portion of the record
11 was read by the Court Reporter.)

12 MR. THOMAS: I would also object. That
13 calls for speculation.

14 JUDGE JONES: Did you raise that objection
15 before?

16 MR. THOMAS: I am adding it to my --

17 JUDGE JONES: I don't have the reporter read
18 it back just so people can think up additional
19 objections. That's not the point of that whatsoever.

20 MR. THOMAS: I am sorry, Judge.

21 JUDGE JONES: Do you understand the
22 question, sir?

23 THE WITNESS: I think I do.

24 JUDGE JONES: I'll allow this question.

1 There's enough of a connection between that and the
2 passages from the Motion to Reopen that were cited.
3 If it leads to more questions along this line, we'll
4 deal with them.

5 MR. TURNER: There won't be, Judge.

6 JUDGE JONES: If you understand the question
7 and are able to answer it, please do so.

8 THE WITNESS: There are as many reasons for
9 a landowner not wanting to sign the agreement as
10 there are landowners. So there is not a general
11 category for all of them.

12 Our experience is you have to address their
13 concerns individually. Some of them are things that
14 we can remedy from a technical point of view.
15 Sometimes we can remedy them other ways. But we
16 treat them as individuals, not as a class.

17 Q. (By Mr. Turner) Thank you.

18 On that page, three lines below the
19 expression hold out, reference is made to Case
20 13-0446.

21 A. I am sorry. I am not following you. You're
22 on page five?

23 Q. Page five.

24 At the very first line in quotations are the

1 two words hold out. Three lines below that.

2 A. Three lines below that where it says: Grant
3 of eminent domain authority?

4 Q. Yes. And in particular, 13-0446.

5 A. Okay. So what is the question?

6 Q. The question is: Is it your understanding
7 that the case you refer to there does not provide for
8 eminent domain for an Enbridge project with a 24-inch
9 pipeline?

10 MR. THOMAS: I object. It calls for a legal
11 conclusion.

12 JUDGE JONES: Response.

13 MR. TURNER: I don't mean it in a legal
14 sense, but in a business sense. And his
15 understanding only, Judge.

16 JUDGE JONES: Sounds like a pretty
17 legal-oriented question. So I will sustain it.

18 MR. TURNER: Thank you, Judge. I appreciate
19 the time here and I thank you for your time.

20 JUDGE JONES: Are you finished with the
21 witness?

22 MR. TURNER: The in camera stuff I am not.
23 But with the public.

24 JUDGE JONES: So your thought is the next

1 line may involve what Enbridge believes would be in
2 camera. Is that your --

3 MR. TURNER: Is that how you want it raised?

4 JUDGE JONES: Well, I don't -- oftentimes,
5 most of the time, counsel among parties will discuss
6 these things before we ever get here. Well, I doubt
7 that we have the benefit of that here.

8 So I don't really know and others probably
9 do not know how exactly this is going to come up.
10 But the witness is on cross. If you ask a question
11 of the witness that Enbridge counsel, Applicant's
12 counsel, believes will involve confidential
13 information in the response, they will raise that
14 before the witness ever answers the question and then
15 we'll have to deal with it.

16 Now, if the parties want to confer and come
17 up with what they believe would be a workable process
18 for this, which typically happens or often happens,
19 then I have no problem with that.

20 Otherwise, we'll just have to see what the
21 question is. And then if they believe it would call
22 for a confidential response, then we'll have to then
23 figure out the in camera part.

24 That's kind of -- if somebody has a

1 different idea, a better idea on how to handle this,
2 then I welcome that. But otherwise, we'll just have
3 to do it this way.

4 MR. TURNER: My intention is to have high
5 respect for proprietary information. And I can do it
6 either way. If counsel for Enbridge would like me to
7 begin with a question that hits a nerve, I'll do
8 that. Or if you would like to talk about it over the
9 noon hour, I'll do that. But we're going to have the
10 highest degree of regard for the proprietary
11 information.

12 MR. REED: If I can offer a suggestion, your
13 Honor. This is Darryl Reed speaking.

14 For continuity of the public record,
15 Enbridge would not object to Mr. Pliura conducting
16 his public cross examination. Once all public cross
17 examination has been done, then we would simply go
18 into in camera for any confidential information. To
19 me, that would appear to be the most productive way
20 to handle this matter.

21 MR. TURNER: Your Honor, Mercer Turner would
22 concur in what he just said.

23 Your Honor, we can come to an agreement
24 every now and then.

1 JUDGE JONES: Dr. Pliura, do you have any
2 comment on that?

3 DR. PLIURA: I have no objection to that. I
4 would anticipate mine might take a while. So I --
5 what is the plan for stopping for the noon recess and
6 the court reporter's rest or are we going to work
7 through that?

8 JUDGE JONES: Well, we'll not go the entire
9 day without a lunch break of some sort. But it's
10 still not clear to me how many questions will involve
11 in camera.

12 Now, if they're coming from two different
13 witnesses, while the suggestion might be workable, I
14 do not have a feel for how many of these questions
15 there are going to be. And I do not want to put a
16 process in place that encourages more in camera than
17 less.

18 For that reason, I think we'll just see
19 what, Mr. Turner, what your in camera questions are.
20 And maybe some of the questions and answers during
21 your cross will cover the same things that Dr. Pliura
22 intends to, and perhaps you will have less because of
23 that.

24 And every time we go in camera, we have to,

1 there is a process there to clear out the room and
2 also the record designation for the transcript has to
3 be made as well.

4 Q. (By Mr. Turner) Here's my first question to
5 hit a nerve.

6 Isn't it true that Marathon and Enbridge
7 have made a contract so that Marathon can have
8 exclusive dominant, almost total use, of the SAX line
9 on a long-term basis for the shipping of light crudes
10 from Canada and the Bakken's to Marathon's three
11 mid-continent refineries via Patoka using Marathon's
12 private lines exiting east of Patoka?

13 MR. REED: I am going to object to that,
14 because number one, it's requesting confidential
15 information. And also, it is speculative.

16 To the extent that the witness is directed
17 to answer that, then we'd have to clear the room of
18 all non-signatories to the Protective Agreement.

19 MR. TURNER: Your Honor, I believe it would
20 be sensitive. I concur on that. Since the --
21 proprietary is the right word. I'm sorry. I suspect
22 everything I ask is pretty sensitive, but
23 proprietary.

24 JUDGE JONES: All right. So Mr. Reed, your

1 statement is that this would call for in camera
2 treatment?

3 MR. REED: That is correct, your Honor.

4 JUDGE JONES: It appears Mr. Turner agrees
5 with that.

6 So at this time, we hereby will leave the
7 public transcript and we'll go into the in camera
8 portion of this hearing.

9 MR. REED: If that, in fact, is the case,
10 your Honor, we would respectfully ask that Mr. Kraft
11 and Mr. Kelly be excused during this period. I
12 believe that counsel for the County, although he has
13 not executed a document, but as a quasi public
14 official, I believe that he would be covered under
15 the terms of the Protective Agreement, and would
16 simply ask that after this proceeding that a document
17 be executed attesting to his agreement to keep any
18 and all matters confidential.

19 MR. KNAPP: I will. I believe my
20 predecessor might have executed the document on --

21 MR. REED: No.

22 MR. KNAPP: Oh, he didn't?

23 MR. TURNER: Your Honor, I will represent to
24 everyone here, your Honor, including you, that

1 Mr. Kraft has diabetes, so he's out to get a little
2 snack. When he comes in, I'll represent or guarantee
3 that he'll sign it or you can keep the door locked
4 and keep him out. Either way is fine with me. I
5 don't care. It's not crucial that he hear it, so you
6 can keep him out. If I am involved in asking
7 questions, I may not notice he comes back in. So I
8 would need some help to kick him out.

9 JUDGE JONES: What is it you propose? Let's
10 start with that. What is it you propose happen with
11 respect to him? That he be allowed in?

12 MR. TURNER: He will sign it or he will stay
13 out. Either way.

14 JUDGE JONES: What is it you are wanting to
15 happen on that?

16 MR. TURNER: I think he would like to hear
17 it. And so I would prefer that he sign anything that
18 Mr. Reed proposes in order to secure the protection
19 of the proprietary information.

20 JUDGE JONES: Are you representing that he
21 will sign it?

22 MR. TURNER: Yes, he absolutely will.

23 JUDGE JONES: Does that suffice for your
24 purposes?

1 MR. REED: Yes, your Honor.

2 MR. TURNER: I would ask -- I can miss him
3 coming in. So is my representation going to be
4 considered a signature? If you want him to
5 physically sign it, then somebody's got to tell him
6 when he comes in here to sign.

7 JUDGE JONES: Is counsel's representation
8 sufficient for the time being to allow Mr. Kraft to
9 be present or not? That's what I am trying to
10 determine. If the representation of counsel is
11 sufficient and then -- and the representation that
12 he'll sign it later and keep it confidential in the
13 meantime, if that suffices for Applicant's purposes,
14 then we'll proceed in that fashion. If not, then
15 we'll figure something out.

16 MR. REED: I guess my only hesitancy, your
17 Honor, I don't have a problem conceptually with what
18 counsel is offering. However, I would feel a lot
19 more comfortable if when Mr. Kraft comes in, he
20 actually, himself, affirms that he will sign it
21 versus accepting the representation of Mr. Turner.

22 MR. TURNER: That's clearly acceptable,
23 Judge, as long as somebody points out to me when he
24 comes in so it can be done.

1 MR. REED: And also, I don't know who the
2 young lady is sitting to the right of Mr. Turner.

3 MR. TURNER: She'll sign it right now. This
4 is Tianyuan Zhao. She's an attorney from Beijing,
5 has her second law degree from the University of
6 Illinois. I have had many interns from that program
7 and they have been in many of the Enbridge
8 proceedings and have seen many of the Sidley lawyers.
9 She's new to the job. She wants to be a big, some
10 day, international lawyer. She will sign it. She's
11 very fluent in English and very bright. But she's
12 not counsel of record. She's not licensed to
13 practice in Illinois. She is an intern.

14 MR. REED: I don't have a problem with that,
15 your Honor. Form 3 attached to the Protective Order
16 simply requires a signature and a notary. I believe
17 that I would certainly be acceptable to having those
18 documents executed tomorrow and then sent to me by
19 e-mail. That is fine.

20 MR. TURNER: You will sign it?

21 MS. ZHAO: Yes.

22 MR. TURNER: Say it louder.

23 MS. ZHAO: Yes, I will.

24 MR. REED: That's fine.

1 I have not heard though from Mr. Pliura or
2 Mr. Kelly. Absent an affirmation, I would
3 respectfully ask that he leave the room.

4 DR. PLIURA: That who leave?

5 MR. REED: Mr. Kelly. Carlisle Kelly, I
6 believe, is the gentleman to my right on the first
7 row.

8 JUDGE JONES: How do you want to handle
9 that, Dr. Pliura?

10 DR. PLIURA: Sure. Mr. Kelly will sign.

11 And Mr. Kelly, will you sign?

12 MR. KELLY: Yes, sir.

13 DR. PLIURA: He indicated yes, sir.

14 Just for the record, your Honor, I feel
15 compelled to say, I do have extremely strong personal
16 feelings about closing public hearings like this.
17 Unfortunately, we're in a proceeding that is in a
18 state agency. And that probably the most bothersome
19 is the ability to have one party just to put the
20 stamp confidential on it and then the public is
21 excluded.

22 For a variety of constitutional issues, the
23 Open Meetings Act and a whole bunch of other things,
24 I think we're going to probably have our greatest

1 problem in deciding what actually truly is
2 proprietary and what is not. I think it is a grave
3 measure when public bodies like the ICC start closing
4 the door to the public. And I am opposed to that.
5 Thank you.

6 JUDGE JONES: Is there someone here you
7 think should be entitled to stay, other than
8 Mr. Kelly?

9 DR. PLIURA: I think the -- I don't know who
10 else is here. I don't know who else may have to
11 leave. I have no knowledge about who might or might
12 not want to come and sign this document of
13 confidentiality. I just -- I think this is a public
14 proceeding and --

15 JUDGE JONES: Please just answer the
16 question that I asked. You expressed your opinion
17 prior to the question.

18 DR. PLIURA: I don't know that, your Honor.
19 I don't know anybody -- I don't know many of the
20 people in this room.

21 JUDGE JONES: I've gone to some trouble here
22 to see if there is a way that those who are
23 physically present and would like to stay present
24 could do so and have talked to counsel for quite a

1 few minutes to try to work that out. So if there is
2 someone that you believe, in addition to Mr. Kelly,
3 then let us know. But that's really what we need to
4 do next.

5 MR. TURNER: This is Mr. Kraft, your Honor.

6 Mr. Kraft will you sign a confidentiality
7 agreement to keep confidential all of the evidence
8 you hear during the in camera examination of the
9 Enbridge witness and produce that to counsel for
10 Enbridge tomorrow by e-mail?

11 MR. KRAFT: Yes, I will.

12 MR. REED: That's fine.

13 JUDGE JONES: Thank you, sir.

14 Any other mechanics regarding the process
15 here? Anything else then before we go in camera?

16 (No response.)

17 JUDGE JONES: All right. Let the record
18 show that we hereby go in camera.

19 (At this point, pages 1187 - 1211
20 were held in camera.)

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1 JUDGE JONES: As indicated, there was a
2 series of cross examination questions and responses
3 regarding in camera portion of the cross examination
4 of the witness by Mr. Turner. A short amount of
5 redirect specific to that in camera portion. We're
6 now back in the public record.

7 Mr. Turner has indicated that he has
8 concluded his -- I am sorry -- his cross examination
9 of the witness. One thing I need to double-check on
10 is if there is any redirect on this witness with
11 respect to the cross examination during the public
12 portion of his cross.

13 MR. THOMAS: No redirect.

14 JUDGE JONES: I suppose I probably should do
15 one other thing. It does not appear that other
16 parties have cross examination.

17 Let me back up. I should note that there
18 will be cross examination of this witness by
19 Dr. Pliura, who will do that -- we'll do that after
20 lunch. And if anyone else has cross examination of
21 this witness, that would occur after lunch too.

22 But let me check and see if there is anybody
23 so we kind of have an idea here. Does Staff counsel
24 have any cross of this witness?

1 MR. OLIVERO: No, your Honor, we don't
2 anticipate any.

3 JUDGE JONES: Any other counsel?

4 (No response.)

5 JUDGE JONES: Thank you.

6 Anything else then before we break for
7 lunch?

8 DR. PLIURA: Not from Pliura Intervenors.

9 JUDGE JONES: One hour, does that work with
10 the group?

11 DR. PLIURA: Yes.

12 JUDGE JONES: We hereby break for lunch for
13 one hour.

14 (Lunch break taken.)

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1 JUDGE JONES: Back on the record.

2 Dr. Pliura, are you ready to do your cross

3 on the witness?

4 DR. PLIURA: I am.

5 CROSS EXAMINATION

6 QUESTIONS BY DR. PLIURA:

7 Q. Tell me how to pronounce your name again. I

8 apologize.

9 A. Monthei.

10 Q. Monthei?

11 A. Yes.

12 Q. Mr. Monthei, I have some questions,

13 generally, about the application that was submitted

14 to reopen.

15 Were you involved in the Application to

16 Reopen what I'll refer to here as the '07 case, which

17 is 07-0446?

18 A. No, I was not involved in the preparation of

19 that application.

20 Q. Do you have any knowledge on how the

21 application was submitted for reopening?

22 A. I don't.

23 Q. It's my understanding that Mr. Rice is sick,

24 is that correct?

1 A. It is.

2 Q. What, to your knowledge, has caused him to
3 be sick and unable to be here today?

4 A. He had a pain in his shoulder earlier this
5 week. He went to see his doctor. They did some
6 cardio stress testing and found some anomalies in
7 that test, and they put him in the hospital for
8 observation. And the following day, they did not
9 clear him to travel. His doctor asked him
10 specifically not to travel.

11 Q. So is it essentially the case that you're
12 here because there was an emergency for Mr. Rice, and
13 you're sitting in his stead, but you're here to
14 certify what you previously certified or verified is
15 true and correct?

16 A. That's correct.

17 Q. With regards to Exhibit Number 1 and Exhibit
18 Number 2, there was testimony on direct exam and then
19 cross by Mr. Turner about some of the details about
20 how this project changed from a 36 to a 24, do you
21 recall, generally, that?

22 A. That's true, yes.

23 Q. I have some questions about the data
24 responses. We're you involved in any data response

1 preparation or answers to data requests that the ICC
2 had submitted to Enbridge?

3 A. I did not have personal involvement. I knew
4 some of the requests. I knew of the work that was
5 ongoing. But I did not have personal involvement.

6 Q. Do you know how those requests were sent
7 from the ICC to Enbridge?

8 A. I don't.

9 MR. THOMAS: I am sorry, Dr. Pliura.

10 Are you asking him about data requests sent
11 by the Commission?

12 DR. PLIURA: Yes. To Enbridge.

13 MR. THOMAS: Well, your Honor, I am sorry.
14 It's just I am confused. Because if he wants to ask
15 him, you know, was he involved in the answering of
16 those, that's fine. But the circumstances under
17 which the ICC sends the request is, obviously, beyond
18 this witness's ability to testify.

19 JUDGE JONES: Response.

20 DR. PLIURA: I am just asking him if he was
21 involved. If he knows.

22 JUDGE JONES: That question is pretty
23 preliminary in nature. If the witness understands it
24 and has an answer, then we would ask him to provide

1 it.

2 Do you need it read back or anything?

3 THE WITNESS: Yes.

4 (Requested portion of the record
5 was read by the Court Reporter.)

6 THE WITNESS: I don't.

7 Q. (By Dr. Pliura) You were asked a line of
8 questions, both I think on direct and then on cross,
9 about some changes in the pipe related to, I think,
10 demand.

11 But in Exhibit 1 of your direct testimony,
12 which has been admitted into evidence, it speaks
13 about a Great Recession and that there were some
14 changes in the demand of the heavy crude or demand in
15 the types of crude oil.

16 Are you generally familiar with that?

17 A. I am.

18 Q. Could you tell me a little bit about that?
19 What is it that your belief is that there's been a
20 change in demand since the project initially -- the
21 application was filed in '07, 2007, and today?

22 A. So originally, there was the identification
23 of shippers wanting to ship heavy crudes and
24 presumably willing to make some commitments around

1 that. And then those would have been discussed or
2 negotiated with our business development group. And
3 as a result of that, the project went forward in
4 terms of its initial development and application for
5 a permit and such.

6 In the course of the recession, some of
7 those shippers came back and indicated, you know, not
8 wanting to follow through on those commitments or
9 commitments to ship heavy crude. So there was a
10 change in the market in terms of what they wanted to
11 ship.

12 Q. Okay. In this application, in the I'll call
13 it the 2007 original application, Mr. Burgess or
14 Burgess gave direct testimony.

15 Are you generally familiar with Mr. Burgess?

16 A. I am not really.

17 Q. Mr. Burgess, in this particular case, was
18 asked a question 9C -- I am sorry, 9Q in his direct
19 testimony that was submitted into evidence in this
20 record: Why is there a need for the project?

21 And he responded in written form, stating
22 that for the reasons in the application and the
23 testimony of Professor Cicchetti.

24 Do you know who Professor Cicchetti is?

1 A. I am not familiar with him.

2 Q. Furthermore, in Mr. Burgess's direct
3 testimony, he indicated that Enbridge had conducted
4 what is referred to as an open season and that there
5 was substantial demand or interest by the shippers.

6 Is that what you're saying that there was a
7 change now and there is not the substantial demand by
8 the shippers?

9 A. Or that it's different.

10 Q. And that's what you're saying?

11 A. Yeah.

12 Q. Are you aware of any evidence that's been
13 submitted to the ICC that would support any demand
14 that is, apparently, that you have testified has
15 changed now?

16 A. That would -- you mean demand in the
17 original --

18 Q. Well, what I am saying is, in the prior
19 case, there was testimony by Mr. Burgess,
20 specifically in his direct testimony at 9Q, where he
21 testified that there was substantial interest by the
22 shippers. They had an open season. And what I
23 thought I heard is for this project.

24 Now, you held, after the Great Recession,

1 two or possibly three open seasons, and there isn't
2 that substantial demand anymore. Is that correct?

3 A. No. What I said was demand change.

4 Q. Okay. Demand -- would it be correct to say
5 the demand went down?

6 A. Overall crude volumes were lower, yeah. And
7 in the second -- in the last two open seasons.

8 Q. (QUESTION ORDERED STRICKEN FROM RECORD.)

9 JUDGE JONES: Wait a minute.

10 MR. THOMAS: I object. That goes into
11 matters that are supposed to be subject to the
12 Protective Order.

13 MS. BACK: May I please have the last
14 question completely stricken from the record?

15 DR. PLIURA: Well, I think, your Honor, I
16 believe Marathon is listed in the --

17 MS. BACK: I am sorry. Before he continues,
18 can we go in camera? I am very concerned with where
19 he's going to go with this explanation.

20 JUDGE JONES: Well, is the objection to the
21 specific number value?

22 MR. THOMAS: That's exactly right.

23 JUDGE JONES: So agreeable to that being --
24 that value being stricken from the record of the

1 public hearing.

2 DR. PLIURA: Yes, I'll withdraw that
3 question for the time being from the public portion.

4 JUDGE JONES: So that --

5 DR. PLIURA: You can strike that. Agree to
6 striking it.

7 MS. BACK: Thank you.

8 JUDGE JONES: Just so we're clear. That
9 question is stricken. And it shall not appear at all
10 in the public transcript. Otherwise, it will --
11 since it was stated, we need to make sure of that.

12 I guess the question is do you want the
13 question totally removed or shown without the number
14 in it? What do you want to appear in the public
15 transcript at this point? Because we have to make
16 sure our court reporter fully understands what is
17 happening so that the transcript will correspond.

18 MR. THOMAS: My suggestion, subject to
19 Dr. Pliura's reaction, is to strike the whole
20 question. And he ought to re-ask it. Otherwise,
21 we're liable to get confused on all sides.

22 JUDGE JONES: That's fair enough. That's,
23 of course, without prejudice to asking a different
24 question without it and in following up in camera if

1 you choose to.

2 So that question should be shown as stricken
3 and shall not appear in the public transcript.

4 Q. (By Dr. Pliura) In Exhibit Number 1,
5 page five, it is noted about halfway down the page in
6 paragraph six -- and I'll read that to you: Thus, as
7 noted in Docket Number 13-0446, Marathon Petroleum
8 Company, Marathon, which operates three PADD II
9 refineries, including one in Robinson, Illinois, that
10 are reachable via the Patoka Hub, has now committed
11 to have Enbridge move light crude to Patoka via the
12 SAX pipeline in order to supply these refineries.

13 Do you see that?

14 A. I do.

15 Q. Is that a true statement?

16 A. As far as I know, it is.

17 Q. Okay. Is the refineries that are referred
18 to at the end of that particular sentence refineries
19 owned by Marathon?

20 A. I am sorry. I don't understand the
21 question.

22 Q. Okay. Well, that sentence that I just read
23 to you concludes with two words, these refineries.

24 Do you see that?

1 A. Uh-huh.

2 Q. Now, you're certifying this. And I am
3 asking you what these refineries are. Are they
4 Marathon's refineries?

5 A. Yes.

6 Q. Directly below that, it indicates, the
7 sentence starts: Marathon has contracted for enough
8 of the line's initial capacity to warrant
9 construction of the line.

10 Do you see that?

11 A. I do.

12 Q. I am going to get back to the question about
13 the significant interest by shippers that was
14 originally filed in 2007. And now, apparently, the
15 interest has dropped off by the shippers, okay. I am
16 going to kind of lead into that.

17 MR. THOMAS: Excuse me. I object to the
18 characterization on the record. I think it misstates
19 it. I think the witness has said there was demand.
20 You used the word significant. And then he said the
21 demand has changed.

22 DR. PLIURA: Okay.

23 Q. (By Dr. Pliura) Has Mr. Burgess or
24 Mr. Cicchetti or anybody on behalf of Enbridge, to

1 your knowledge, submitted any documents or testimony
2 that would reflect how much demand there is for the
3 proposed project now?

4 A. Yeah, I haven't seen anything from those
5 sources.

6 Q. Okay. In Exhibit 1 on page two, at the
7 bottom of paragraph one, the last sentence of that
8 paragraph one, it says: Accordingly, that pipeline,
9 denominated as the Southern Access Extension
10 Pipeline, was then conceived --

11 A. I am sorry. I am not following you.

12 Q. I'm sorry. Go to page two of Exhibit 1.

13 A. Yes.

14 Q. Go to the paragraph that is labeled number
15 one.

16 A. Okay.

17 Q. Go to the last sentence in that paragraph.

18 MR. THOMAS: It's second to last, I believe.

19 Q. (By Dr. Pliura) I am sorry. Second to
20 last.

21 Go to the second to last and read those last
22 two sentences. And then I am going to ask you some
23 questions about it.

24 A. Where it starts off: SAX was proposed?

1 Q. Sentence starts with: Accordingly, that
2 pipeline.
3 A. Okay.
4 Q. Do you see that?
5 A. Uh-huh.
6 Q. Okay. I believe that that refers to the
7 original Southern Access Pipeline that was proposed
8 as a 36-inch pipeline --
9 A. Yes.
10 Q. -- correct? Okay.
11 And originally, the 36-inch pipeline was
12 supposed to move, mainly, heavy crude, correct?
13 A. Yes.
14 Q. And producers and shippers and Canadian
15 Association of Petroleum Producers supported the
16 extension project in pursuit of the requisite
17 approval, correct?
18 A. Yes.
19 Q. Now, this particular project is primarily
20 going to be a light petroleum project, isn't it?
21 A. It's primarily light, light oil at this
22 point.
23 Q. And are you aware of any testimony that has
24 been submitted since the project changed from a

1 primarily, or mainly, heavy crude petroleum pipeline
2 to a light petroleum pipeline?

3 MR. THOMAS: Can I have that question read
4 back, please?

5 (Requested portion of the record
6 was read by the Court Reporter.)

7 MR. THOMAS: Dr. Pliura, I mean, perhaps I
8 am just confused about the question, therefore, I
9 don't know whether to object to it.

10 This is, in effect, testimony and it
11 obviously addresses that. If there is some aspect to
12 that you want to delve into, that's fine.

13 DR. PLIURA: Yes.

14 Q. (By Dr. Pliura) My followup is going to be
15 tell me what basis you are proposing this project for
16 now a light petroleum project since the heavy crude
17 is no longer going to be the main reason this is
18 being proposed.

19 Why the light project?

20 A. That would have come out of the two open
21 seasons that were conducted in those proposals, would
22 have come out of that in part or in total. And our
23 business development team would have worked those
24 agreements.

1 So those light crude volumes were identified
2 in the more recent open seasons.

3 Q. Okay. What I am really trying to understand
4 though is Enbridge has not supplemented the record
5 with any expert testimony from Mr. Burgess, the
6 petroleum engineer, or Mr. Cicchetti about the
7 numbers or the benefits that you're aware of, are
8 you?

9 A. No.

10 Q. If the project has changed from -- well, let
11 me withdraw that, and say, is it generally correct to
12 say that the original plan was to ship heavy crude
13 petroleum from Canada down to the United States and
14 have that product then shipped to refineries that
15 could handle heavy crude refinery services?

16 A. Yes. Of course, I wasn't here back then, so
17 I can only tell you that the intent was to ship heavy
18 crude on SAX. Whether it came from Canada could very
19 well have been. I just don't know that.

20 Q. Okay. What evidence do we have in the two
21 documents that have been admitted into the record
22 that suggest that there is any support for this light
23 crude project?

24 A. Well, I mean, when we do have the shippers

1 that make commitments, that's pretty -- that's pretty
2 good support.

3 Q. Well, I know that -- I know that you're
4 saying that there are two shippers. I understand
5 that. But I guess, really, what I am trying to
6 understand and ask you is: There was Mr. Cicchetti
7 and Mr. Burgess had testified there was tremendous
8 support from, I believe, it's multiple shippers. And
9 then you testified that there was a Great Recession
10 and the environment changed. Correct?

11 MR. THOMAS: I am going to object to the
12 question. The use of the word tremendous. Unless
13 Mr. Pliura has the document where that term was
14 actually used. I don't have any problem with the
15 question if he eliminates that word. But I don't
16 believe that's an accurate characterization of the
17 testimony.

18 JUDGE JONES: I think the witness may have
19 actually answered that though.

20 Is there an answer in there, Miss Reporter?

21 COURT REPORTER: I don't believe there was.

22 JUDGE JONES: Response.

23 DR. PLIURA: Well, I believe that
24 Mr. Burgess's testimony at 9Q that's currently in the

1 record in this case uses the word, response was so
2 substantial.

3 MR. THOMAS: Will you represent that was, in
4 fact, the word?

5 DR. PLIURA: I will represent, to my
6 knowledge and belief, the record says that I have
7 written here that the response was so substantial.
8 And that's in 9Q of Burgess's direct.

9 MR. THOMAS: If counsel has represented
10 that, I'll accept that. That is different than the
11 word tremendously.

12 In general, it seems to be my experience in
13 these hearings is to cross examine a witness on some
14 statements made by someone else in the record, it's
15 customary, in my experience, to show the witness
16 those statements rather than simply having
17 representations made, whether it's by me or anybody
18 else.

19 DR. PLIURA: And if you want to stop, I
20 could do that. I have it here.

21 MR. THOMAS: I have accepted. If you're
22 representing to me the word was so substantial, I
23 will accept that, subject to your representation.

24 JUDGE JONES: Do you want to re-ask the

1 question?

2 DR. PLIURA: Maybe I will ask.

3 Q. (By Dr. Pliura) Would you acknowledge that
4 there was substantial interest by multiple shippers
5 in 2007 or do you know?

6 A. I believe that was the case.

7 Q. Is it correct to say that there is less
8 substantial interest by shippers for this particular
9 proposed project?

10 A. Yes.

11 Q. Is it correct to say that you held two open
12 seasons and two shippers showed interest to commit?

13 A. Yes.

14 Q. Did anybody, to your knowledge -- or let me
15 ask you. Are you aware of whether or not anybody --
16 any shippers committed to the third open season for
17 this particular project?

18 A. I guess I am not aware of a third open
19 season.

20 Q. Exhibit 3 -- I am sorry, Exhibit 1, page
21 three, at paragraph three. If you would just read
22 the first couple of lines of that and then I am going
23 to ask you some questions about what you
24 substantiated here.

1 A. You did say Exhibit 1, page two?

2 Q. No. Page three, paragraph three.

3 A. Page three, paragraph three. Okay.

4 Q. Is it -- we touched on this just briefly,

5 but is it correct to say that the Great Recession had

6 impacted the nation's economy to the point that it

7 negatively affected demand for transportation of

8 crude oil by common carrier pipelines?

9 A. I believe that's correct.

10 Q. And is it correct to say that the climate,

11 the economic climate, halted entirely or caused the

12 demand to fall?

13 MR. THOMAS: I object. That's a compound

14 question. Decide which way you want to ask.

15 DR. PLIURA: Sure.

16 Q. (By Dr. Pliura) I am just really going

17 after the question or the statement here that starts:

18 A climate of economic uncertainty and hesitation

19 resulted as market demand and growth fell or halted

20 entirely and demand for petroleum products and crude

21 oil transportation stagnated.

22 MR. THOMAS: I withdraw my objection.

23 THE WITNESS: That's a correct statement.

24 Q. (By Dr. Pliura) Are you aware of any

1 evidence that has been submitted by any expert in
2 this particular case to reopen that would suggest
3 that the demand has improved to the point to
4 substantiate a 24-inch pipeline?

5 A. Yeah, I am not aware of that.

6 Q. Page four of Exhibit 1 under paragraph four,
7 if you could read the first several sentences there
8 and I'll ask you some questions about that.

9 The first sentence mentions: In this period
10 of economic restraint and retrenchment, developments
11 in the supply side of the energy market and demand
12 for various petroleum grades shifted somewhat in
13 nature.

14 Can you tell me what that means in plain
15 English? I don't know what supply side energy market
16 demand is.

17 A. Yeah, sure. What we're talking about there
18 is the ongoing productions in North Dakota,
19 particularly the developments in Alberta and
20 Saskatchewan, in those formations that brought more
21 crude online to be shipped. So that was actually
22 nonexistent or very minor, initially, in 2007.

23 Q. Okay. And what do you mean when you say
24 demand for various petroleum grades shifted? Is

1 that --

2 A. That's just talking the shift from -- for
3 the light versus the heavy based on the availability
4 of the light.

5 Q. Other than this statement here, is there
6 anything, any evidence in the record that would
7 support the volume of this change, meaning if the
8 drop when heavy crude was X barrels a day, but there
9 has been a non-commitment increase in light barrels a
10 day?

11 Do you see what I am saying?

12 A. Yeah, I don't know that we document the --
13 or provide documentation in terms of the shippers
14 wanting to not ship heavy crudes. We just didn't do
15 that. We did document the fact that we do have
16 shippers ready to ship.

17 Q. Two shippers?

18 A. Two shippers.

19 Q. Reading down about six or eight lines, there
20 is a sentence there that says: Recognizing these
21 factors, the Enbridge system undertook a number of
22 responses. These included the decision to build the
23 Flanagan South Pipeline from Pontiac to Cushing,
24 Oklahoma, a project proposed in 2012 and authorized

1 by the Commission in 2013 and December '12
2 announcement of Enbridge's \$6.2 billion "Light Oil
3 Market Access Program."

4 Do you see that?

5 A. I do.

6 Q. Is it correct to say that the Flanagan South
7 Pipeline that you reference here is shipping some of
8 the materials that you talked about, this Bakken,
9 down from Pontiac to Cushing, Oklahoma?

10 A. I am not really that familiar with the
11 Flanagan South shippers. That project, I don't have
12 much to do with. So I don't know what the make up
13 are on the shippers and the volumes.

14 Q. Is it correct to say that you can't really
15 certify or attest to this information that you
16 actually have certified? You can't certify that
17 part?

18 A. What I said is I couldn't specifically tell
19 you what the volume mix is of Sandpiper.

20 Q. I don't really need to know the volume of
21 the specific barrel number. Is it correct to say in
22 this document that you certified that a decision --
23 let me ask.

24 Why was the Flanagan South Pipeline built

1 that you certified here?

2 A. It was the demands. Again, I don't have the
3 specifics on Flanagan South having not been involved
4 with it. The fact is it is being built. And in
5 fact, is -- you know, there are shipper volumes
6 identified to be shipped on that. Otherwise, there
7 wouldn't be economic value in building that.

8 So in fact, that is a correct statement. I
9 just don't know the breakdown of what is included in
10 those volumes on Flanagan South.

11 Q. What is the importance of them to have the
12 Flanagan South Pipeline mentioned here in this
13 particular document that you certified? Do you know?

14 A. They're just mentioned in the context of the
15 overall program of which that's a part of. It's a
16 \$6 billion program. It involves several different
17 projects of which that is one of them.

18 Q. Well, is the Flanagan South Pipeline
19 carrying at least some light oil?

20 A. I believe so. But again, I can't tell
21 you -- I'm not an expert on Flanagan.

22 Q. Well --

23 MR. THOMAS: Just so the record is clear.
24 There was a whole proceeding on Flanagan. There is a

1 whole public record on that that could be looked at
2 for purposes of some of these questions.

3 Q. (By Dr. Pliura) The reason that I am asking
4 this is we have gone over Enbridge maintains that the
5 market demand shifted from heavy crude up in Canada
6 to the Bakken formation. Correct?

7 MR. THOMAS: I object. That
8 mischaracterizes his testimony. He said that it was
9 light oil both from Bakken and from Saskatchewan.
10 And Alberta, which last I looked, are in Canada.

11 Q. (By Dr. Pliura) Well, the document here
12 indicates growing refining demand in eastern Canada
13 and U.S. for so-called light oil. Is that true?

14 A. Yes.

15 Q. And in response to that, Enbridge built the
16 Flanagan South, correct?

17 A. As part of the response to that, yes.

18 Q. In regards to this change in the pipeline
19 from 36 to 24, really, what I am getting at is if you
20 got a 30 -- a 42-inch pipe coming into Flanagan and a
21 36-inch pipe that goes from Flanagan to Cushing, and
22 you have got now a 24. You've got 24 and you've got
23 36 coming out of Flanagan, but you only got 42 coming
24 into Flanagan, correct?

1 A. Yeah, I am not really that up to speed on
2 all the pipes coming into Flanagan and going out.
3 That's an operations expertise.

4 Now, the other thing too is it's not the
5 pipe diameter that's the need to be balanced. It's
6 the flow rates.

7 What you're suggesting is that there's got
8 to be a balance there. And it's the flow rates that
9 you want to balance.

10 Q. Are you a petroleum engineer?

11 A. I am not.

12 Q. Do you have any independent knowledge on the
13 flow rates and how that -- could you testify to any
14 basis on the flow rates?

15 A. I don't know the flow rates going in and out
16 of Flanagan. That would be somebody with operations.

17 Q. Would it be correct to say that if I ask you
18 what a flow rate is for a 24-inch pipe of light oil
19 versus heavy oil, you wouldn't be able to tell me?

20 A. Not off the top of my head. I would have to
21 run calculations. It's an engineering function.
22 It's not something somebody could tell you off the
23 top of their head.

24 Q. You're not an engineer, right?

1 A. My background is engineering. However, I
2 have been in management for such a long time that I
3 would probably defer to others to run the
4 calculations.

5 Q. Page five of Exhibit 1, paragraph six.
6 Again, we talk about this development period from
7 2007 to 2012 where supply and transport diversity
8 increased with demand shifting to light oil in the
9 U.S. Midwest and eastern Canada markets and heavy
10 crude demand in movements growing in and to the U.S.
11 Gulf Coast refining complex, resulting in the project
12 such as the Flanagan South.

13 Is Flanagan South now mainly carrying heavy
14 crude to the south?

15 MR. THOMAS: I object to this line of
16 questioning.

17 First off, we're not in the Flanagan South
18 proceeding. Secondly, the witness has said he
19 doesn't know a lot of specifics about Flanagan South.

20 And Mr. Pliura, who also, I believe, is not
21 a petroleum engineer, is you know, suggesting somehow
22 that all of this would require a petroleum engineer.
23 So he's in the wrong proceeding. We have got a
24 witness who says he doesn't know much about that

1 pipeline. And supposedly, only a petroleum engineer
2 could understand any of this any way.

3 So I object on that basis.

4 JUDGE JONES: Response.

5 DR. PLIURA: Well, my response is this.
6 They have chosen not to -- Enbridge has chosen not to
7 supplement the record with any expert testimony from
8 petroleum engineers, from economists, from
9 Mr. Burgess who gave testimony in the original record
10 here.

11 And obviously, my question is, is if he is
12 not here to testify to it, he did testify that the
13 demand has all changed. But we don't have any demand
14 to support this particular project. There isn't any
15 testimony that I can see in here that said what the
16 demand is and that it is sufficient for a 24-inch
17 pipeline. That's where we're going with this.

18 JUDGE JONES: Miss Reporter, could you read
19 the question back, please.

20 (Requested portion of the record
21 was read by the Court Reporter.)

22 JUDGE JONES: Well, I'll allow the question.
23 It's essentially a followup seeking some followup
24 information from what is in paragraph six. Where

1 that line of questioning may lead is to serve another
2 question, but it sounds like a reasonable question
3 given the statement that was read into the record.

4 MR. THOMAS: Thank you for the ruling. I
5 would like to state on the record, however, because I
6 think it's a matter of public knowledge. There is no
7 Flanagan South line built at the time. It should be
8 clear, it's not operative.

9 JUDGE JONES: Do you want to re-ask your
10 question or what do you want to do?

11 DR. PLIURA: I think I'll just --

12 JUDGE JONES: Let me say this too. That
13 really needs to be inserted into the argument before.

14 MR. THOMAS: I apologize.

15 JUDGE JONES: When you have the chance.
16 Rather than waiting again, waiting for something to
17 be read back and coming up with new arguments.

18 MR. THOMAS: I apologize. I think that's
19 the second time I have done that. I will try to make
20 sure I don't do it again. I did not do it
21 deliberately.

22 JUDGE JONES: I don't doubt that.
23 Nevertheless.

24 Do you want to keep the same question on the

1 table or do you want to ask a different one?

2 DR. PLIURA: I am going to ask a different
3 question.

4 Q. (By Dr. Pliura) I am going to go to the
5 bottom of page five, which is seven -- paragraph
6 seven. And you have certified a claim that in the
7 circumstances, and as part of the Light Oil Market
8 Access Program, Enbridge Illinois has determined that
9 the appropriate initial capacity of the SAX pipeline
10 is now 300,000 barrels per day, a volume that can be
11 readily accommodated by a 24-inch outside diameter
12 pipeline.

13 Do you see that?

14 A. Yes.

15 Q. Now, we have established that you're not a
16 petroleum engineer that has expertise on testifying
17 here today, correct?

18 A. I am not a petroleum engineer.

19 Q. And what I am -- other than just this
20 conclusionary statement, this statement that Enbridge
21 Illinois has determined the appropriate initial
22 capacity of the SAX pipeline is now 300,000 barrels,
23 my question is: How have they come to decide that
24 300,000 and 24 inches is the proper change to make?

1 And there is no --

2 A. That's an analysis our business development
3 group would have made by, again, understanding the
4 markets, monitoring the markets and market trends,
5 and then also looking at that capacity relative to
6 other North America capacities and determining that
7 that would be an appropriate size. And then once
8 they figure the volumes, it's just a matter of math
9 to come up with 24 to support that volume.

10 Q. Is it correct to say that nobody from
11 Enbridge business development has submitted anything
12 into the record to substantiate the allegations that
13 300,000 is needed?

14 A. Yeah, I don't recall them submitting backup
15 to that 300,000.

16 Q. Enbridge does have commitment, apparently,
17 from Marathon, correct?

18 A. Yes.

19 Q. Page seven of your Exhibit 1, you indicate
20 SAX line will initially -- this is at the top line.
21 The SAX line will initially transport more light oil
22 than heavy crude, correct?

23 A. Yes.

24 Q. And that is not what was originally proposed

1 in this project, was it? It was originally primarily
2 heavy crude or, mainly, heavy crude?

3 A. Yes.

4 Q. Are you aware of anything in the record that
5 Enbridge has submitted that would suggest that there
6 is a need for more light oil and less heavy crude?

7 A. Well, I think the material that we have
8 submitted indicates that we do have shipper
9 commitments for some volumes. But the part that I
10 don't think we have submitted is the change or the
11 lack of commitments or information on the lack of
12 commitments so far on the heavy side for heavy oils.

13 Q. You were asked a line of questions about, I
14 think, refineries. And I was making notes, so I
15 apologize.

16 JUDGE JONES: Is this line of questioning by
17 whom?

18 DR. PLIURA: I think it was Mercer Turner.

19 JUDGE JONES: Typically, we don't allow
20 followup cross on other people's cross. If you're
21 going to represent to me that you would be asking
22 these questions anyway, even if you had not heard
23 Mr. Turner ask them, I will accept your
24 representation and allow you to proceed. If it's

1 simply following up on somebody that went ahead of
2 you, then I will not.

3 If you want to make that representation --

4 DR. PLIURA: I will make that
5 representation.

6 Q. (By Dr. Pliura) I just wanted to clarify, I
7 think you said you had no opinion on the amount of
8 any refining demand that any refiners had, correct?

9 A. That's correct.

10 Q. Are you aware of any evidence that's in the
11 record as to refining demand?

12 A. I don't recall seeing any references to
13 refining demand within the documentation.

14 Q. You have on several occasions talked about
15 the business development people at Enbridge.

16 Do you recall that?

17 A. I have, yes.

18 Q. You're not in that particular division?

19 A. I am not.

20 Q. I apologize. I am just trying to get an
21 understanding of that business development team.

22 What is it that they do at Enbridge?

23 A. Well, they're tasked with monitoring the
24 markets in North -- throughout the world, actually.

1 But primarily in North America to assess where there
2 is a need in terms of production and distribution.

3 And so they monitor that fairly closely and
4 then also do that a number of ways, including staying
5 abreast in the industry, but also talking to
6 different shippers, different producers to determine
7 where a need may exist for pipeline or some
8 transportation requirement. That's their primary
9 function. Once they do that, they also go on to
10 analyze that need to determine, you know, what
11 Enbridge may want to do in order to satisfy that
12 need.

13 Q. I am going to just ask you, in the original
14 testimony in this particular case, Dale Burgess, at
15 page five, I think it was -- I have 10 here written,
16 but it's page five, Dale Burgess indicated that there
17 was -- given overall demand in an increasing
18 preference of refiners for Canadian source crude, and
19 then he went on to testify in support of the project.

20 A. I am sorry. You're saying on our page five?

21 Q. No, no. I am sorry. This was in the
22 original. I had a page five here.

23 But I'm going to ask you a question about
24 that. He indicated in support of the project and the

1 need for a 36-inch pipe that there was increasing
2 demand for Canadian sourced crude. And a decline in
3 American domestic production. Okay, that was in '07.

4 Has there been an increase now in -- or a
5 flip flop -- I will call it a flip flop in that. Is
6 there now increasing, in your opinion, production in
7 America and declining production in Canada?

8 A. Well, I can tell you there is increase in
9 production in the U.S. I don't know of any declining
10 production in Canada. I just don't know.

11 Q. And I am just going to ask you about, you
12 know, much of the original application was based on
13 figures that -- for which evidence had been submitted
14 about 400,000 barrels of this heavy crude daily.

15 Are you generally aware of that?

16 MR. THOMAS: I am going to object to the
17 characterization of the application. I don't have
18 any problem with your asking the question about the
19 400,000. But to say that much of the original
20 application focused on that I think is a
21 characterization that doesn't need to be made and I
22 think is inaccurate.

23 DR. PLIURA: We could remove the word much.

24 MR. THOMAS: That's fine.

1 THE WITNESS: Can you restate the question,
2 please?

3 Q. (By Dr. Pliura) Well, yeah.

4 You're aware that, originally, there was
5 this proposal that this project would add initial
6 capacity of 400,000 barrels per day for movement to
7 the Patoka storage facility and to the southern
8 United States, is that --

9 A. Yes.

10 Q. Are you aware of that?

11 A. Yes.

12 Q. Now, when this project is changed from a 36
13 to a 24, that will no longer be the case. There
14 won't be 400,000 barrels per day, will there?

15 A. No.

16 Q. And I am reading now from just a blurb out
17 of the Fourth District Appellate Court opinion. But
18 it references there were comments by Enbridge's
19 experts that there would be a present value savings
20 of \$407 million based on mitigating effects if the
21 change in the size of the pipeline changes the amount
22 of and type of oil or crude petroleum that's being
23 shipped into the United States.

24 Will that change these numbers, these

1 benefits?

2 MR. THOMAS: I object to using the Appellate
3 Court decision that way. Mr. Monthei is not a
4 lawyer. He would have to determine, you know, in
5 what context the Appellate Court said that and so
6 forth. There's got to be a more direct way for
7 Mr. Pliura to get at his question.

8 DR. PLIURA: I am happy to restate it.

9 Q. (By Dr. Pliura) Enbridge, in its initial
10 application, had an expert testify that there would
11 be substantial benefits to the Illinois consumers and
12 that they would enjoy, number one, present value
13 savings of \$407 million based on the mitigating
14 effect of increased oil production and improved
15 regional security and dependancy on uncertain oil
16 supplies from South America and the Middle East are
17 replaced by a stable flow of Canadian oil.

18 I guess my question is, is if you change the
19 size of the pipe from 400,000 barrels a day down to
20 something less, aren't you going to change the whole
21 benefit scenario numbers?

22 A. Well, the public benefit in our -- arrived
23 at for Southern Access Extension, as we submitted in
24 our testimony, was determined by a number of factors

1 that the ICC utilized in determining that value. I
2 don't think flow rate was one of the things that they
3 referenced.

4 Q. Okay. So you don't believe then that by
5 changing the size of the pipe that will have any
6 change on the economic benefits that Enbridge's
7 experts testified to in this case, is that what
8 you're saying?

9 A. Well, okay. Now you're changing the
10 question. Before you were asking me about the public
11 benefit. Now we're talking specifically economic
12 benefit.

13 So are we talking economic benefit or
14 talking --

15 Q. I will talk about any benefits.

16 A. Because they are different.

17 Q. Well, let's talk about public benefit. Are
18 you generally aware that in this case, this '07 case,
19 Enbridge had experts testify that there will be
20 present value savings of \$407 million. And that the
21 public would benefit. Specifically, it would benefit
22 Illinois consumers. That's what Enbridge's expert
23 testified to. Just take it -- just for the sake of
24 this, assume that is what is in this record.

1 A. Okay.

2 Q. If you change the size of the pipe from --
3 and the amount shift from 400,000 barrels a day to
4 something less, won't those monetary benefits change?

5 A. They could. You're playing with a number of
6 variables. And that kind of analysis, you're talking
7 about the volume which offsets the cost. So in this
8 case, we have the different volumes and different
9 costs. So is the relative value the same when you do
10 that analysis? I couldn't tell you off the top of my
11 head.

12 Q. You're not really prepared or able to say
13 what the benefits would be. Wouldn't that be left, I
14 mean, from the financial standpoint? Like,
15 Cicchetti, for example. If he testified to \$407
16 million, you're not able to testify?

17 A. I don't have the economic analysis that is
18 complimentary to that here in front of me.

19 Q. Is that correct then, you're not able to
20 testify to the benefit?

21 MR. THOMAS: I object. As long as you add
22 as confident by Dr. Cicchetti, I have no objection.
23 The witness has already said there is a difference
24 between public benefit and economic benefit. You

1 just need to be clear.

2 Q. (By Dr. Pliura) Well, what is the
3 difference between public benefit and economic
4 benefit?

5 A. The public benefit, as we have defined in
6 our testimony, is what was determined by Illinois
7 Commerce Commission in terms of their evaluation of
8 this project. The economic benefits is just simply
9 the value of that project that is realized when it's
10 completed and we bring in product or we transfer
11 those product. It's pure economics.

12 Q. Okay. I am going to just follow up on that
13 question.

14 You indicated that the ICC determined that
15 there would be a public benefit, correct?

16 A. Yes.

17 Q. And that was when there was a pipe that was
18 going to be 36 inches in diameter and it was going to
19 transport heavy crude from Alberta in Canada down
20 through Superior and into Illinois?

21 A. That's correct.

22 Q. And now, that has all changed, correct?

23 A. Yes.

24 Q. Are you aware of any testimony from anybody

1 that would substantiate the benefit that Illinois
2 consumers, or any consumers, are going to get, from
3 the now changed project of what was originally
4 proposed, the 36 and the heavy crude, now 24 and
5 light crude, from a whole different area?

6 A. Those same kind of analyses, those same kind
7 of discussions, those same type of references,
8 irrespective of either scenario, 36 or 24, are still
9 relevant.

10 So yes, those conversations would have --
11 you're asking me specifically, am I personally aware
12 of what testimonies are presented with respect to
13 those benefits. Other than what is stated in our
14 submission where we reference what ICC had to look to
15 in terms of determining those public values, I don't
16 know of any.

17 Q. Okay. I think I just have a few more
18 questions on this before we get into the confidential
19 stuff.

20 But my -- there was originally a filing by
21 Enbridge in the Federal Energy Regulatory Commission.

22 Are you generally familiar with this, about
23 this project?

24 A. Yes.

1 Q. And you're familiar that that was submitted,
2 and it was proposing a 24-inch pipeline, correct?

3 A. Yes.

4 Q. Do you know, generally, when that occurred,
5 that FERC filing?

6 A. You know, I can't recall the timing exactly.

7 Q. I have a copy here and I was just going to
8 ask you. If I could just take a moment to look at
9 it.

10 DR. PLIURA: May I approach, your Honor?

11 JUDGE JONES: Yes, sir.

12 Q. (By Dr. Pliura) Is it correct that on May
13 2, 2013, to the best of your knowledge, Enbridge
14 filed a petition for a Declaratory Order with the
15 Federal Energy Commission related to the Southern
16 Access Extension Project?

17 A. Yes, I believe that's correct.

18 Q. And is it correct, if you look down to three
19 -- and I know this isn't in the record, but if you
20 would look down to paragraph three on page one of the
21 FERC report. It indicates that, according to
22 Enbridge Illinois, the project currently is sized as
23 a 24-inch pipeline that will provide up to
24 300,000 barrels per day of capacity for crude oil

1 transportation.

2 MR. THOMAS: Is there a question there?

3 Q. (By Dr. Pliura) Is that correct?

4 A. Yeah, you just read that sentence. And I
5 believe that's correct.

6 Q. Really, what I am getting at is that it's
7 correct that as of May 2, 2013, Enbridge was
8 proposing a 24-inch pipeline, isn't that correct, for
9 this particular Southern Access Project?

10 A. Well, that's partly correct. But the
11 paragraph also goes on to state that the results of
12 additional open season, Enbridge states it may
13 increase the size of the pipe from 30 to 36 inches.

14 So what is going on in that period is our
15 business development people are assessing the market
16 conditions. And they want to do that right up until
17 they're not able to do it. And then based on that
18 assessment and understanding of market conditions,
19 they're either going to propose to design this
20 pipeline for increased values based upon market --
21 most current market conditions and market trends or
22 they're going to propose less, smaller values if
23 that's what the market trends demand.

24 This says, at this particular moment, it

1 looks like 24. But it also says that could all
2 change. And to be honest with you, we were looking
3 at different sizes for this pipeline up until we
4 ordered the pipeline.

5 Q. Is it correct though that as of May 2, 2013,
6 you were proposing at that time a 24-inch pipeline
7 for Southern Access, is that correct?

8 A. Again, this proposes a 24. But it also goes
9 on to state that market conditions could change that.
10 So there is a qualifier.

11 Q. Did any of the market conditions change that
12 warranted going upwards?

13 A. Ultimately, no. We went with 24. But I can
14 tell you that they did go up to 30. There for a
15 while, we thought they were going to be 30, then down
16 to 24, then up to 30. So during that assessment
17 period, we were all over the map on the size based on
18 what our business development people were telling us
19 the market demands were going to support.

20 Q. Okay.

21 A. We actually thought it was going to be
22 30 inches right up until we made the pipe order.

23 Q. Okay. It was going to be less than 36
24 though, correct?

1 A. Well, 30 was kind of the number that kept
2 coming to the -- in terms of a likelihood. The 30 --
3 it could have been 36 at one point. But like I said,
4 it went up and down while they were doing these
5 analyses.

6 DR. PLIURA: Would it be -- just go through
7 my notes and then I think we can go quickly on, your
8 Honor, to the private portion of my questioning and I
9 will finish.

10 Q. (By Dr. Pliura) One last question. If
11 Marathon was not involved in this particular project,
12 would it be, in your opinion, that the project would
13 not be viable?

14 A. I am not sure. When you say Marathon not
15 involved, do you mean if they did not make the
16 commitment on the volumes or do you mean Marathon not
17 involved in terms of the partnership that they have
18 with Enbridge as a part owner?

19 Q. Both.

20 A. I would say the first part, if Marathon was
21 not a partner with Enbridge on this pipeline, the
22 pipeline would go forward. If Enbridge was not a
23 committer with respect to those volumes, which is a
24 separate agreement, then there might not be enough

1 volumes to justify the project.

2 DR. PLIURA: Okay. I think that would
3 conclude my time, except for the private questioning.

4 JUDGE JONES: At this time, let the record
5 show that the public portion of the hearing today is
6 temporarily put on hold and we hereby move into in
7 camera -- or back into the in camera portion of
8 today's hearing and resulting transcript.

9 (At this time, pages 1258 - 1271
10 were held in camera.)

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1 Q. (By Dr. Pliura) In your open seasons that
2 were proposed for the Southern Access Extension, were
3 shippers expected to commit for 10 or 15-year terms?

4 A. I am sorry. Were they expected to ship, I
5 guess, either or?

6 Q. Either or.

7 A. I don't know the terms of what specific
8 things we were requesting at that open season.
9 Typically, they're longer term commitments. But
10 whether it was 10 or 15, I just don't recall.

11 Q. Okay. If we say either 10 or 15, were
12 committed shippers expected to sign a commitment for
13 either a 10 or a 15-year term?

14 A. It's typically a longer duration. So it
15 would have been something in that order, yes.

16 JUDGE JONES: Could we open that door just
17 to make sure anybody that comes around looking to get
18 in will be able to see that we're not still in
19 confidential session? Thank you.

20 Q. (By Dr. Pliura) Under the terms of those
21 commitments, if someone wanted to ship and commit to
22 ship, were they going to be expected to pay for a
23 portion of the pipeline as well?

24 A. They would have paid whatever tolling are

1 worked out in the FERC agreement.

2 Q. Yes. And isn't it true that the FERC
3 agreement required that they pay a portion of the
4 actual pipeline construction?

5 A. The pipeline construction and operating cost
6 would have been factored into that toll, yes.

7 Q. So somebody that wanted to ship on
8 Enbridge's -- wanted to use or use as common carrier
9 and commit to ship on the common carrier pipeline,
10 they were going to be expected to sign either a 10 or
11 15-year commitment and they were going to have to pay
12 for the pipeline or a portion of it, correct?

13 A. Well, what I said was they would have to pay
14 whatever tolls were determined from FERC.

15 Q. And I think --

16 A. As part of that, it would recognize there
17 are capital costs depreciated. That's part of the
18 cost of operating the pipeline. But they wouldn't
19 own the pipeline.

20 Q. I know that.

21 A. Okay.

22 Q. They wouldn't own the pipeline, but they
23 were going to -- a person. If I wanted -- I was a
24 member of the public here in Illinois and I wanted to

1 ship on this common carrier, if I had the pipeline
2 product, I would have to, under the open season
3 agreement, sign a 10 or 15-year commitment, correct?

4 A. Under the open season agreement, yes.

5 Q. And I would have to agree to the FERC?

6 A. Rates.

7 Q. Rate, which included a payment to actually
8 -- that was allocated for construction of the
9 pipeline too, correct?

10 A. That's under the open season. Of course,
11 there's other ways to do that too. But yes, that's
12 under the open season. In order to tie up the
13 shippers for a longer commitment.

14 Q. Right.

15 Well, what happens if a smaller shipper that
16 just gets into the business but wants to use this
17 common carrier pipeline for public use doesn't have
18 the wherewithal to commit to a 10 or 15-year contract
19 or can't afford to pay for the pipeline like Marathon
20 can?

21 A. There is a requirement that we keep some
22 capacity reserve for any spot shippers other than
23 long term.

24 Q. How much is that capacity?

1 A. I believe it's -- I can't remember the
2 percentage. It's a regular -- I would rather not
3 speculate, but there is a margin that we're required
4 to keep. It's in the 10 percent range, something
5 like that, for just spot.

6 Q. And so 10 percent of that line, would that
7 be correct, would be reserved?

8 A. That's my recollection. I think it's 10
9 percent. But again, I haven't looked at that
10 recently.

11 DR. PLIURA: I have no further questions.

12 JUDGE JONES: All right. Thank you, Dr.
13 Pliura.

14 We have heard the redirect on the in camera
15 portion. Is there any redirect otherwise?

16 MR. THOMAS: If you'd give us just a few
17 minutes. There's been a gap here, so we just need to
18 go through our notes.

19 JUDGE JONES: I don't want to give too much
20 time. What do you suggest here?

21 MR. THOMAS: I would suggest no more than
22 five minutes. Might be less.

23 JUDGE JONES: All right. We hereby recess
24 for five minutes.

1 (Recess taken.)

2 JUDGE JONES: Back on the record.

3 Mr. Thomas, redirect.

4 MR. THOMAS: I am going to try to make

5 everybody happy. There will be no redirect.

6 JUDGE JONES: I believe that concludes the

7 questioning of the witness.

8 Am I overlooking anything?

9 (No response.)

10 JUDGE JONES: Let the record show no

11 response.

12 Thank you, sir.

13 All right. The examination of Mr. Monthei

14 is concluded.

15 That brings us to somebody else's witnesses.

16 I don't know if there's been any prior arrangement.

17 Who's planning on going next? Any

18 discussion?

19 MR. OLIVERO: I was thinking we could go

20 ahead and use Staff witness Mark Maple.

21 JUDGE JONES: All right. Then that's what

22 we'll do.

23 * * * * *

24 MARK MAPLE,

1 of lawful age, produced, sworn and examined on behalf
2 of STAFF, testifies and says:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. OLIVERO:

5 Q. Good afternoon. Please state your full name
6 and spell your last name for the record.

7 A. My name is Mark Maple. My last name is
8 spelled M-A-P-L-E.

9 Q. And Mr. Maple, by whom are you employed?

10 A. I am employed by the Illinois Commerce
11 Commission.

12 Q. And what is your position with the Illinois
13 Commerce Commission?

14 A. I am a Senior Gas Engineer for the Energy
15 Engineering Program of the Safety and Reliability
16 Division of the Illinois Commerce Commission.

17 Q. And Mr. Maple, have you prepared written
18 testimony for purposes of this reopening proceeding?

19 A. Yes, I have.

20 Q. And do you have before you a document which
21 has been marked for identification as ICC Staff
22 Exhibit 4.0, which consists of a cover page, four
23 pages of narrative testimony, Attachments A and B,
24 and is titled Direct Testimony on Reopening of Mark

1 Maple?

2 A. That's correct.

3 Q. Is that a true and correct copy of the
4 direct testimony that you have prepared for this
5 proceeding?

6 A. Yes, it is.

7 Q. Do you have any corrections to make to your
8 prepared direct testimony?

9 A. No, I do not.

10 Q. Is the information contained in ICC Staff
11 Exhibit 4.0 and the accompanying schedules true and
12 correct to the best of your knowledge?

13 A. Yes.

14 Q. And if you were asked the same questions
15 today, would the answers contained in your prepared
16 testimony be the same?

17 A. Yes.

18 MR. OLIVERO: Your Honor, at this time, I
19 would ask for admission into the evidentiary record
20 of Mr. Maple's direct testimony on reopening marked
21 as ICC Staff Exhibit 4.0, and would note for the
22 record, this is the same document that was originally
23 filed on the Commission's e-Docket system on
24 August 27, 2014. And we would tender Mr. Maple for

1 cross examination.

2 JUDGE JONES: Thank you.

3 Are there any objections to the admission of
4 ICC Staff Exhibit 4.0?

5 MR. THOMAS: No objection.

6 DR. PLIURA: Pliura Intervenors have no
7 objection.

8 JUDGE JONES: Others?

9 MR. TURNER: No objection yet. But your
10 Honor, I am reserving cross. Is that the
11 understanding?

12 JUDGE JONES: You are reserving cross. But
13 are you --

14 MR. TURNER: Subject to cross, I have no
15 objection.

16 JUDGE JONES: So your no objection is
17 qualified. It's subject to cross.

18 MR. TURNER: Yes.

19 JUDGE JONES: Then I will withhold any
20 ruling on the admissibility of 4.0 and order that
21 Mr. Turner can determine whether he has any
22 objections after cross.

23 The witness has been tendered for cross. Do
24 both of you, Dr. Pliura and Mr. -- both of you have

1 questions?

2 DR. PLIURA: Yes.

3 MR. TURNER: Yes.

4 JUDGE JONES: Who would like --

5 MR. TURNER: I would, if it would please the
6 Court and counsel and everyone.

7 JUDGE JONES: Mr. Turner.

8 CROSS EXAMINATION

9 QUESTIONS BY MR. TURNER:

10 Q. Mr. Maple, you have had the high honor and
11 distinction, have you not, of serving in the capacity
12 as a witness on behalf of the Illinois Commerce
13 Commission for the '07 case filed in 2007, for the
14 Case 13-0447 and for reopen 07-0447, is that correct?

15 A. That's correct.

16 Q. And I have always -- I thought it was a
17 great coincidence, but probably intentionally done.
18 The '13 case and '07 case have the same last four
19 digits. Was that intentionally done that way so it
20 would be marked as -- upon the '07 case?

21 A. I think it was coincidence. But it makes it
22 easy to remember.

23 Q. Wow.

24 And in your testimony in this proceeding,

1 you have identified elements, have you not, which you
2 consider must be met in order for there to be an
3 amendment to the '07 Certificate of Good Standing
4 from a 36-inch to a 24-inch pipeline, is that
5 correct?

6 MR. OLIVERO: Your Honor, would it be
7 possible for Mr. Turner to reference where he's
8 discussing, I guess, in his testimony? I know it's
9 not that long.

10 MR. TURNER: Yes.

11 MR. OLIVERO: Thank you.

12 Q. (By Mr. Turner) Sorry about this. On page
13 two, line 31, in response to that question on line
14 31, you mention four criteria.

15 A. Those are criteria for obtaining a
16 certificate. Not for amending a certificate.

17 Q. Okay. That's what I was going to ask you
18 about.

19 Are those four criteria that are mentioned
20 there applicable in this proceeding?

21 A. I don't believe they necessarily are.

22 Q. And what is your basis for that conclusion?

23 A. Because when the Commission issued the
24 reopening of the case, they specifically limited the

1 scope of the proceeding.

2 Q. Are you familiar with the fact that there
3 were actually two Orders that were submitted
4 reopening the case?

5 A. I believe there was a correction to the
6 Order.

7 Q. Do you know anything about how that
8 correction occurred?

9 A. I do not.

10 Q. And what in the corrected Order causes you,
11 if anything, to say that there are no longer four
12 criteria to be evaluated?

13 A. Do you have the Order in front -- that you
14 can present to me?

15 Q. No, I do not. I am sorry.

16 A. I don't recall the specific language of the
17 Order without seeing it.

18 Q. Wasn't it something to the fact that
19 reopened limited to the question of whether the
20 pipeline diameter can be reduced from 36 to 24?

21 A. I can't recall what the language was.

22 Q. Isn't it, however, the Staff's opinion,
23 expressed prior to the reopening, that there were a
24 number of issues which should be addressed for the

1 reopening?

2 MR. OLIVERO: Your Honor, I guess I am going
3 to object. I am not really sure what opinion he's
4 talking about. Mr. Turner is referencing before, I
5 guess, the Reopening Order.

6 Q. (By Mr. Turner) While I am looking for
7 this, let me ask you. Do you recall that on May 21,
8 2014, Enbridge answered two data requests and
9 provided copies of that in the record here, which
10 Enbridge says came from the Staff?

11 Do you recall that?

12 A. What came from the Staff?

13 Q. Two data requests.

14 A. I didn't send out any data requests in this
15 case.

16 Q. Okay. Did you ask that data requests be
17 updated at any time?

18 A. I believe that we did.

19 Q. And who's we?

20 A. My counsel and I.

21 Q. And you were aware that the updating was
22 requested?

23 A. Yes.

24 Q. And was it you that requested it?

1 A. I don't recall.

2 Q. Do you know why those two data requests were
3 asked to be updated?

4 A. Because we were interested in what the
5 answers might be.

6 Q. Weren't there a large number of data
7 requests originally in 07-0446?

8 A. There are several dozen probably.

9 Q. And why weren't all the data requests asked
10 to be updated?

11 A. I didn't feel like they were pertinent to
12 the scope of what we were doing here.

13 Q. And the two data requests that you asked to
14 be updated, that request to update it was done before
15 the case was open and reopened and before the ICC
16 issued a limiting Order saying that the reopening was
17 limited to the question of a reduction in the
18 pipeline diameter from 36 to 24, is that correct?

19 MR. OLIVERO: Can I -- I guess I wasn't
20 really clear about the question.

21 MR. TURNER: I will restate it, Judge.

22 Q. (By Mr. Turner) At the time you asked that
23 the two data requests be updated, you were not aware
24 that the Order opening 07-0446 would have some

1 limiting language in it, is that correct?

2 A. That's correct.

3 Q. So it wasn't the Order that caused you to
4 only request the updating of two data requests, is
5 that right?

6 A. Right.

7 So for instance, one of the original data
8 requests, I think, was to provide a map of the
9 project. I didn't feel like I needed another map of
10 the same project. There were a number of data
11 requests that I didn't feel like would have any
12 substantial changes to them.

13 Q. So you did review all of the original data
14 requests. And out of all of those, you concluded
15 that, at that point in time, that there were only two
16 that you felt should be updated, is that correct?

17 MR. OLIVERO: Can I just ask for
18 clarification on what time period you're talking
19 about, when he asked about the first two?

20 MR. TURNER: That's an excellent
21 clarification.

22 Q. (By Mr. Turner) When was it you asked those
23 two data requests we're talking about be updated?

24 A. I don't recall off the top of my head. I'm

1 not sure if it's in one of our responses or not.

2 Q. One of your responses to what? The case
3 hadn't been opened yet.

4 A. I don't know if that date has been provided
5 in the last several weeks of filings.

6 Q. It has not been provided.

7 A. I don't have that date in front of me.

8 Q. Do you know whether it was while Case Number
9 13-0446 was open?

10 MR. OLIVERO: Your Honor, I guess I am going
11 to object in terms of the line of questioning here on
12 relevance in terms of when these data requests were
13 asked to be updated, because I guess I am not really
14 clear how that's relevant to what is at issue in this
15 docket here. And I don't know that even in any of
16 the prior motions and arguments made on behalf of the
17 Intervenors that I am clear how that's relevant.

18 MR. TURNER: Your Honor, he just objected
19 because I didn't clarify the timeline. So I am
20 trying to clarify it now based on his objection. And
21 I believe it's relevant, because he put the answers
22 to the data requests in his testimony.

23 MR. OLIVERO: Well, when we issue data
24 requests, and the fact that the answers are put in,

1 again, I am not really clear how that has anything to
2 do with the case. The answers are in. He can ask
3 about the answers that were provided by Enbridge.
4 But how that affects Mr. Maple when they were
5 requested and when they were received, they're in the
6 record.

7 JUDGE JONES: Can I have the question read
8 back?

9 (Requested portion of the record
10 was read by the Court Reporter.)

11 JUDGE JONES: What is that relevant to,
12 Mr. Turner?

13 MR. TURNER: Well, counsel for the ICC asked
14 me to clarify the timeline, what period of time am I
15 talking about. So I am trying to do that. And I
16 believe it is pertinent.

17 I struggle a little bit in this, because
18 those data requests were issued in response to Turner
19 Intervener data requests after this case was open. I
20 was trying to figure out how in the world data
21 requests got submitted before a case got opened. And
22 I learned that it was done before the case was open.
23 I would like to know, simply, when it was done.

24 And if the witness doesn't recall, I would

1 ask his counsel if that date of when it was done and
2 request to be submitted into the record within a
3 reasonable period of time.

4 JUDGE JONES: Are you asking when the DR was
5 submitted?

6 MR. TURNER: Yes.

7 JUDGE JONES: Is that date reflected in the
8 record today?

9 MR. TURNER: It's not reflected anywhere,
10 Judge. Only that it happened before April -- May 21,
11 2014.

12 MR. OLIVERO: That is correct. And I
13 believe the filing was on May 19 of 2014.

14 JUDGE JONES: Which filing?

15 MR. OLIVERO: The filing for the Motion to
16 Reopen.

17 I believe some of the questions, I guess,
18 he's seeming to intertwine 13-0446 with the current
19 docket. And we did provide a response that said we
20 submitted the requests to update the data requests
21 before the 21st of May, that is correct.

22 JUDGE JONES: There comes a point here that
23 we need to move along. I will allow the question.

24 Q. (By Mr. Turner) Do you know when it was

1 that they were submitted?

2 A. I don't know the date.

3 Q. Do you know how it was submitted? Was it

4 over the phone? Internet transmission? Letter?

5 A. First of all, you keep saying submitted.

6 The data request was submitted like in 2007 or 2008.

7 Q. When was the request to update submitted?

8 A. The update, I don't know the date. It would

9 have been in a phone conversation.

10 Q. And who was on the phone conversation?

11 MR. OLIVERO: Your Honor, again, I guess I

12 am going to object for the same reason that I stated

13 before about the relevance of when the data requests

14 were sent and how that pertains to the petition or

15 the Application to Reopen.

16 JUDGE JONES: Overruled. Overruled.

17 If you understand the question, please

18 answer. If you need it read back, we can have it

19 read back.

20 THE WITNESS: On our end, it was myself, my

21 counsel, possibly my supervisor. I don't remember.

22 Q. (By Mr. Turner) Who is your supervisor?

23 A. Eric Lounsberry.

24 Q. And where is his office?

1 A. His office is several doors down from mine.

2 Q. And that's in Springfield, in this building?

3 A. Yes.

4 Q. And when you say your counsel, could you

5 identify his name?

6 A. John Feeley and Jim Olivero.

7 Q. Were both on?

8 A. I didn't keep notes of who was present at

9 this phone conference. At least one of the two were.

10 Possibly both.

11 Q. But you're sure at least one was?

12 A. Yes.

13 Q. How did that phone call come to occur?

14 A. I don't recall. I didn't set it up.

15 Q. Do you believe there is a record of when the

16 phone call occurred?

17 A. There could be. I don't know.

18 MR. TURNER: Well, your Honor, I would ask

19 that, at this time, the counsel for the ICC, if there

20 is a record of when the phone call occurred, when the

21 data request update was made, that that be put in the

22 record in a reasonable period of time as evidence.

23 And the pertinence of it is this, your

24 Honor. Based on his testimony here --

1 JUDGE JONES: Well, you're asking them to do
2 it. That doesn't make it subject to a ruling.
3 You're making a request to them to see if they're
4 willing to do that, to provide that to you.

5 Q. (By Mr. Turner) Would you please state who
6 was on the other end of the phone call?

7 A. I don't recall with certainty. I believe
8 two or three of the Enbridge attorneys that are here
9 today would have been present, as well as some
10 representatives from the Company. Which like I said,
11 I did not take notes at the meeting. I don't have
12 that full list.

13 Q. Do you know who placed the phone call?

14 A. No, I don't.

15 Q. Other than asking for a renewal of the two
16 data requests and an updating of those, what was the
17 other conversation about?

18 A. I think we were just trying to figure out
19 what was actually going on. The first time we had
20 heard about the possible change in size was in one of
21 Mr. Pliura's, I think, reply brief on exception. So
22 we were calling to see if there was any truth to that
23 and what the circumstances were regarding that.

24 Q. And did you determine that the disclosure

1 made by Mr. Pliura was factual, honest and correct?

2 A. Well --

3 MR. OLIVERO: Your Honor, I guess I am going
4 to object for just specificity in terms of the time
5 period.

6 MR. TURNER: Well, I have asked him to
7 provide that to me, your Honor. And the witness has
8 said he can't recall.

9 MR. OLIVERO: Well, you're asking him when
10 he knew or when he was able to verify that what
11 Enbridge told us.

12 And I don't -- it's one thing to say what
13 they told us. And then it's another thing to say
14 that he verified that it was, in his mind --

15 Q. (By Mr. Turner) In that telephone
16 conversation, did Enbridge tell you that, yes,
17 indeed, they were going to build a 24-inch pipeline?

18 A. Yes.

19 Q. And as far as you were concerned then, the
20 Pliura disclosure in 2013 was verified to be
21 accurate, honest and correct?

22 A. That --

23 JUDGE JONES: Pliura disclosure when?

24 MR. TURNER: Judge, mentioned in his

1 testimony --

2 JUDGE JONES: No. I am just asking what
3 your question was.

4 MR. TURNER: My question was --

5 JUDGE JONES: You made reference to a Pliura
6 disclosure and a date and some numbers. I am just
7 trying to --

8 Miss Reporter, could you just read back what
9 we have.

10 (Requested portion of the record
11 was read by the Court Reporter.)

12 MR. TURNER: 2013 case.

13 JUDGE JONES: That's not what you said.
14 That's why I am clarifying.

15 MR. TURNER: I am sorry. Let me restate,
16 please.

17 Q. (By Mr. Turner) In Case 13-0446 was what
18 you have just testified about as being the first time
19 you learned that Enbridge was going to build a
20 24-inch pipeline for this SAX.

21 A. Yes.

22 Q. And it was that brief filed by Pliura which
23 then caused the ICC Staff to ask questions of
24 Enbridge about whether that was accurate, right?

1 A. Yes.

2 Q. And those -- that inquiry occurred during a
3 phone call. And that's the -- is the answer yes?

4 A. Yes.

5 Q. And it's that phone call that, at present,
6 you don't remember when it was, but which I have
7 asked your counsel here today to see if there is a
8 record of it and to provide me -- not provide me, put
9 in record as evidence the date of that phone call?

10 A. Is that a question?

11 Q. Yes.

12 I just want to make sure we're all talking
13 about the same phone call. So we are, aren't we?

14 Are you -- did I confuse you?

15 A. I think we're talking -- I think I know
16 which phone call you're talking about.

17 Q. Well, I want to state it in the record that
18 the phone call I am talking about here is the phone
19 call I have asked your counsel to provide me the date
20 of, yes?

21 A. Yes.

22 Q. And based on the Enbridge response, which
23 was that, yes, indeed they were going to build the
24 24-inch pipeline, during that phone call then, you

1 were satisfied then that indeed they were?

2 A. Yes.

3 Q. And so it is the disclosure in 13-0446 by
4 the Pliura Intervenors which precipitated the phone
5 call and inquires by the ICC Staff directly with
6 Enbridge which resulted in the two data requests
7 being asked by the Staff to be updated?

8 A. Yes.

9 Q. And your review of the data request and the
10 original 07-0446 case occurred before that phone
11 call?

12 A. No, I don't believe so.

13 Q. Do you have any recollection then as to why
14 those two particular data requests were selected if
15 you hadn't yet reviewed the data requests in 07-0446?

16 A. Yes, those two stuck out in my mind as
17 being -- I have worked several pipeline cases. We
18 usually send out the same standard set of initial
19 data requests. So I am familiar, generally, with the
20 questions that we ask.

21 Out of all those questions, those two,
22 without reviewing them, stuck out in my mind as
23 questions we might want updates to.

24 Q. And even though you don't recall the

1 specific day of the phone call, it was precipitated
2 by the Pliura filing in 13-0446, and the verification
3 that you made was for the purposes of knowing whether
4 that fact stated in the 13-0446 was accurate?

5 MR. OLIVERO: Your Honor, I am going to just
6 ask for clarification. I am not sure I understood
7 what the question was. Maybe if the witness
8 understood, I apologize. But I wasn't really
9 following.

10 MR. TURNER: I'll be glad to restate that,
11 Judge.

12 Q. (By Mr. Turner) The phone call that we're
13 talking about was made so that the Staff could verify
14 that a factual assertion in 13-0446 was accurate.
15 Right? Yes or no?

16 MR. OLIVERO: I guess I am going to object.
17 Whose factual assertion are you talking about?

18 MR. TURNER: The Pliura factual assertion.

19 MR. THOMAS: Which one?

20 MR. TURNER: About the pipeline reduction.

21 MR. OLIVERO: We're talking about his reply
22 brief on exception?

23 MR. TURNER: Yes.

24 MR. OLIVERO: I don't know that that's a

1 factual assertion. It was a pleading that he filed
2 at the end of April.

3 Q. (By Mr. Turner) And that pleading contained
4 an affidavit of Carlisle Kelly, didn't it?

5 A. I don't remember.

6 Q. In any event, whether it did or not, and
7 whether it was presented as a fact or not, you still
8 wanted to know whether that fact was accurate?

9 A. We called to find out if Enbridge was
10 planning on changing the size of the pipeline.

11 Q. And before that phone call, you had no basis
12 at all to think that there would be a motion filed to
13 reopen 07-0446?

14 JUDGE JONES: Is that a question?

15 MR. TURNER: That is a question.

16 THE WITNESS: I didn't know if Enbridge
17 intended to file a motion or not.

18 Q. (By Mr. Turner) So the investigation that
19 occurred in that phone call was for the purposes of
20 the hearing and the brace in Case 13-0446?

21 JUDGE JONES: Is that a question?

22 MR. TURNER: That's a question.

23 MR. OLIVERO: Your Honor, I am going to
24 object. I am not --

1 I take that back. I withdraw the objection.

2 THE WITNESS: No, it didn't have anything to
3 do with the '13 case.

4 Q. (By Mr. Turner) Well -- I am sorry. I
5 didn't mean to interrupt. Go ahead.

6 A. That case, as far as Staff was concerned,
7 was concluded. We had no more -- I had no more
8 analysis to do in that case. We were waiting on the
9 Final Order, I believe.

10 That phone call was made to just determine
11 what was going on and if any action needed to be
12 taken outside of the '13 docket.

13 Q. Do you recall that the Staff filed a
14 response to the brief on exceptions by Pliura, the
15 Pliura Intervenors, after his brief on exceptions
16 disclosed the pipeline reduction to 24 inches?

17 MR. OLIVERO: Your Honor, I am going to
18 object to this. I think this was something we raised
19 in one of the replies that we filed to either
20 Mr. Pliura or Mr. Turner, because the document that
21 Staff filed after the reply briefs was in response to
22 a motion filed by Enbridge, which really went to the
23 merits of the filing by Mr. Pliura.

24 And so, again, I am back to my contention

1 that this really isn't relevant to purposes of this
2 proceeding and really doesn't add anything to the
3 question raised in this reopening.

4 MR. TURNER: Your Honor, if I could respond?

5 JUDGE JONES: Overruled. Similar to some
6 earlier objections.

7 MR. TURNER: Do you remember the question?

8 Your Honor, can I ask that it be re-read?

9 JUDGE JONES: Miss Reporter.

10 (Requested portion of the record
11 was read by the Court Reporter.)

12 THE WITNESS: I didn't have anything to do
13 with that filing. I believe I have read that we did
14 make that filing.

15 Q. (By Mr. Turner) As you sit here today, the
16 decision by the Administrative Law Judge had not yet
17 been made in 13-0446 when that phone call was placed?

18 MR. OLIVERO: Objection, your Honor. That
19 wasn't what he said in terms of the time. He was
20 asking before about when the filing was made. I
21 don't think that has anything to do with when the
22 phone conversation. He's already said he doesn't
23 remember when.

24 MR. TURNER: That's a different question,

1 Judge, because it asks time based on an event instead
2 of a date. And sometimes people's memories get
3 jogged.

4 JUDGE JONES: What decision are you
5 referring to?

6 MR. TURNER: Your decision in 13-0446.

7 JUDGE JONES: Talking about the Proposed
8 Order?

9 MR. TURNER: Yes.

10 JUDGE JONES: The Proposed Order would have
11 preceded the brief on exceptions.

12 MR. TURNER: Okay.

13 Q. (By Mr. Turner) Do you recall it being
14 before the final ICC decision?

15 A. It may have been. I don't have those dates
16 in front of me.

17 Q. The reason for the inquiry was because the
18 Staff had concluded that Enbridge needed to change
19 its Certificate of Good Standing to reflect the
20 24-inch pipe, if indeed it was going to build a
21 pipeline, is that correct?

22 A. No, that's not correct.

23 Q. Well, why would there need to be -- if what
24 you're saying is accurate, which is that you were

1 done in 13-0446, and that you didn't know whether
2 they were going to file a Motion to Reopen, then what
3 purpose would there be served by investigating
4 whether that -- whether, indeed, Enbridge was going
5 to build a 24-inch pipeline? Why the phone call?

6 A. To see what they intended to build. And we
7 were trying to determine whether or not the
8 certificate did need to be amended. At that point,
9 we had not made that conclusion.

10 Q. After that phone call, do you believe you
11 came to a conclusion?

12 A. Well, at some point after the phone call,
13 because we're here today.

14 Q. Okay. So the Motion to Reopen 07-0446 all
15 was precipitated by a phone call from the ICC Staff
16 to Enbridge?

17 A. Say that again.

18 Q. The Motion to Reopen 07-0446 was
19 precipitated by a phone call from the ICC Staff to
20 Enbridge?

21 MR. OLIVERO: I am going to object. That
22 has to deal with what Enbridge's, I guess,
23 determination was for filing a Motion to Reopen. I
24 think he's already testified the reason that the

1 contact was made.

2 But I think he's making a leap here that
3 isn't substantiated by what Mr. Maple has testified
4 to.

5 JUDGE JONES: Sustained.

6 You can rephrase.

7 Q. (By Mr. Turner) At some time after the
8 phone call that we're talking about, were there other
9 communications between the ICC Staff and Enbridge
10 which indicated that the Staff concluded that
11 Enbridge needed to file a Motion to Reopen 07-0446?

12 A. I don't believe so.

13 Q. Was there any type of communication from the
14 ICC Staff to Enbridge that it should consider filing
15 a Motion to Reopen 07-0446?

16 A. I believe there may have been a phone call
17 where we told them, you know, we didn't give any
18 legal advice to them. They were free to do whatever
19 they wanted. But that did come up as an option that
20 they would file to reopen the case.

21 Q. And that was a second phone call? Or are we
22 talking about the first one?

23 A. I believe there are two phone calls.

24 Q. Do you know how far apart the phone calls

1 were?

2 A. I don't.

3 Q. Now, I finally found a paper here that --
4 and found a record by the Staff of the Illinois
5 Commerce Commission in response to Turner
6 Intervenors' motion to August 27, 2014. And the
7 Staff response is dated August 29, 2014.

8 And in paragraph six, my copy, it doesn't
9 have page numbers on it. I am sorry. But I think it
10 got filed without page numbers. But paragraph six of
11 that document says that Staff counsel informed
12 counsel for Enbridge and its representatives that
13 Staff believed Enbridge would need to amend its
14 certificate granted in the Docket Number 07-0446.

15 Do you see that?

16 A. Yes, I see that.

17 Q. Is that accurate?

18 A. Yeah. Yes.

19 Q. And you believe it's accurate from your
20 memory that it's accurate?

21 A. It's consistent with what I remember.

22 Q. And it says Staff and Staff counsel.

23 When it's referring to Staff, is it
24 referring to you?

1 A. Yes. Me and possibly other Staff members.

2 Q. And the Staff counsel is the two lawyers you

3 have identified, one of whom is here today?

4 A. Yes.

5 Q. And then in the next paragraph, it says:

6 Staff suggested.

7 And then there is a list of things that come

8 after that with bullet points?

9 Do you see that?

10 A. Yes.

11 Q. How was that list of things communicated to

12 Enbridge?

13 A. I believe it was in an e-mail.

14 Q. Who sent the e-mail?

15 A. It wasn't me.

16 Q. Do you know, do you have any memory today as

17 to the timing relationship between the e-mail that

18 contains this bullet point list and the request to

19 update the status -- to update the two data requests?

20 A. I think the request to update the two data

21 requests was in the first phone call. And this list

22 would have come some time after that.

23 Q. After the first phone call?

24 A. Yes.

1 Q. Do you believe it came after the second
2 phone call?

3 A. I don't recall.

4 Q. Now, how was this bullet point list put
5 together?

6 A. Several Staff members had input on it,
7 including myself. And Staff counsel probably had
8 input as well.

9 Q. It says there in the first line of paragraph
10 seven, Staff suggested to Enbridge that to support an
11 amended certificate, Enbridge should address.
12 And who was doing the supporting in that
13 paragraph seven, first sentence?

14 A. Enbridge.

15 Q. And so the Staff is recommending to Enbridge
16 what it should include in its Motion to Reopen to
17 support the Motion to Reopen?

18 MR. OLIVERO: Objection, your Honor. I
19 think it says suggests, not recommends.

20 MR. TURNER: I will rephrase it. Sorry
21 about that.

22 MR. OLIVERO: That's all right.

23 Q. (By Mr. Turner) Paragraph seven accurately
24 says that the ICC Staff recommended -- I said it

1 again. Scratch that. Suggested to Enbridge that it
2 include these bullet points to support its amended
3 certificate. Correct?

4 A. That's what it says here.

5 Q. And the reason that the ICC Staff was
6 telling Enbridge -- was suggesting to Enbridge how to
7 do it was for what reason?

8 A. I am sorry. Can you repeat that?

9 Q. Why did the Staff make this suggestion to
10 Enbridge?

11 A. I don't know. I didn't provide the list to
12 them.

13 Q. I have been around these proceedings, as you
14 know. I remember when you looked a lot younger and
15 in the '07 case. And maybe so did I. And had a
16 little darker hair. And the Enbridge lawyers are
17 pretty good darn lawyers, especially on this ICC
18 stuff.

19 And I am just wondering, why would the Staff
20 make the suggestion to them?

21 A. I think the reason why is if there were
22 going to be a reopening, there would be discovery
23 that Staff would normally do in a new case. And
24 rather than wait and conduct that discovery through

1 numerous writing and answering of data requests,
2 responses, that we put some of our questions in this
3 e-mail, which would then shorten the discovery
4 process, basically. Streamline it.

5 Q. And why was the Staff interested in
6 streamlining the discovery process?

7 A. Just for efficiency. Like I said, rather
8 than me have to type out 20 questions, or whatever,
9 and send them off and set deadlines and wait for
10 replies.

11 Q. Let's look at the second bullet point. It
12 says: Explain why a 36-inch pipe is now too large.

13 What do you believe to have been Enbridge's
14 response to that?

15 A. First, let me make a statement about this
16 whole -- this entire list. This list was put
17 together before, you know, we had seen the
18 application, before we had gotten very much
19 information at all on what was being changed with the
20 pipeline.

21 So this list was put together kind of as a
22 brainstorming session among Staff and Staff counsel.
23 Every question was not -- would not necessarily end
24 up being pertinent to our review of the case. This

1 was kind of, like I said, a brainstorming of possible
2 things that we might want to know that might be
3 important. And then given the scope of the reopening
4 later, some of these didn't end up being pertinent to
5 the case.

6 Q. Now, the brainstorming was among the two
7 lawyers and ICC Staff, including you.

8 Were there other Staff lawyers involved? Or
9 not Staff lawyers. Staff members.

10 A. Yes.

11 Q. There was?

12 A. Yes.

13 Q. And is that the person you referred to as
14 your boss?

15 A. He was one of them. There may have been
16 others. I don't know.

17 Q. Did the brainstorming have anything to do
18 with wanting to accelerate the speed in which the
19 decision was made on whether or not the ICC would
20 approve the pipeline diameter change?

21 A. No. We never had any concern with the speed
22 of the case. When I said streamlining, I meant the
23 efficiency in which we do our discovery.

24 Q. In discussing this with Enbridge, was there

1 any comment about a construction schedule?

2 A. I don't recall there being.

3 Q. Of the items that are listed in the bullet
4 point list, what items do you believe are pertinent
5 for purposes of an ICC decision on whether or not to
6 approve the pipeline diameter change?

7 MR. OLIVERO: Your Honor, I guess I am going
8 to object, because I think, obviously, subsequent to
9 the time that this list was sent, Mr. Maple went
10 ahead and filed his direct testimony. So I think the
11 items that he relied upon should be contained in his
12 direct testimony.

13 JUDGE JONES: This is cross. Request was
14 provided in Staff response. I think it's reasonable
15 cross examination.

16 THE WITNESS: Can I have a few minutes to
17 look at the list?

18 Q. (By Mr. Turner) Go at them one at a time.
19 Just say number one is or isn't pertinent; number two
20 is or isn't pertinent today.

21 A. I think I will just answer more generally.
22 I was satisfied between the updates to the two data
23 request responses and what Enbridge provided in their
24 application. All of that information, given the

1 scope of the reopening by the Commission, I was
2 satisfied with all that information that was
3 presented to conclude that the certificate should be
4 amended.

5 Q. And I am not going to be able to put my
6 fingers on that second Order to Reopen. But it said
7 something like it was open and limited to the change
8 in the diameter to 24 inches.

9 What about that limitation causes you to now
10 say in your testimony, official testimony in this
11 case, that the issues which pertain to a Certificate
12 of Good Standing don't apply to an amendment to a
13 Certificate of Good Standing?

14 A. I don't believe that the amending of a
15 certificate is the same as having to meet the four
16 criteria of obtaining a new certificate. To me,
17 amending a certificate is merely fixing an error or
18 changing -- making a change to what has already been
19 approved.

20 Q. Now, you realize that there was no error in
21 the original Order in this case, right?

22 A. That's fair to say.

23 Q. And you would also agree with me, would you
24 not, that there are a lot of factors that relate to

1 the difference between a 36-inch project for dilbit
2 and a 24-inch project for light crude, would you not?

3 A. I don't believe there are actually that many
4 differences between the two proposed pipelines.

5 Q. Well, for one thing, isn't the volume that a
6 36-inch pipeline can transport considerably larger
7 than the volume that a 24-inch pipeline can
8 transport?

9 A. It is.

10 Q. And doesn't the difference in volume then
11 have an impact on the public benefit?

12 A. Not necessarily.

13 Q. What inquiry was made by the Staff, if any,
14 or what answers, if any, did the Staff get from
15 Enbridge about the percentage of shipping that
16 Marathon had prior or subsequent to the answers to
17 the two data requests?

18 A. We have the same information that you have
19 and received it at the same time, presumably.

20 Q. Do you believe the issue of whether the SAX
21 is a private line for Marathon is relevant in this
22 proceeding regarding the reduction of the pipeline
23 diameter?

24 A. I think you're asking for a legal opinion,

1 which I am not a lawyer.

2 Q. I understand that. But you work with the
3 ICC standards all the time. And those standards are
4 contained in law and in regulations and in cases and
5 in different things. And I am not asking you from a
6 legal perspective. But based on your understanding
7 and having to be put on the spot in these things, and
8 be a witness and make recommendations, through that
9 lens and in that context.

10 Your understanding not as a lawyer, but in
11 the capacity that you serve, do you have an opinion
12 about whether the question of the SAX being a private
13 line for Marathon is a pertinent consideration with
14 respect to the approval of the pipeline diameter
15 reduction?

16 A. I don't -- I think those are two totally
17 separate issues. I don't think that the issue of
18 private line has anything to do with a size change of
19 the line.

20 Q. And why is that?

21 A. Because, one, you're talking about how many
22 shippers are on the line. And the other, you're
23 talking about the diameter of the piece of steel.

24 Q. Wouldn't it make common sense that if the

1 capacity of the line was lower that there could be a
2 greater chance that that capacity was used for one
3 shipper as opposed to multiple shippers?

4 MR. OLIVERO: Judge, I am going to object.
5 That calls for speculation.

6 JUDGE JONES: Overruled.

7 If you understand the question and are able
8 to answer it, please do.

9 THE WITNESS: Can you rephrase that?

10 MR. TURNER: Yes, I would be glad to.

11 Q. (By Mr. Turner) If the capacity of the line
12 is reduced, which occurred in -- which the proposal
13 would result in in this case, isn't there a greater
14 likelihood that the line being predominately for one
15 shipper is greater?

16 A. If you're asking a theoretical question --

17 Q. I am asking a question of logic.

18 JUDGE JONES: Well, let the witness answer.
19 Complete whatever he was about to say.

20 THE WITNESS: I don't believe, in this case,
21 that this is a private line.

22 Q. (By Mr. Turner) Okay. What is the basis
23 for your opinion?

24 A. Several things. Number one, there are more

1 than one shipper. To me, private would indicate one
2 shipper. And second of all, there is other capacity
3 that has not been subscribed. And I believe the FERC
4 Order that's out there said that for FERC to consider
5 them as a common carrier, they only needed to hold
6 out 10 percent of the capacity to have that
7 distinction. And they seem to be holding out more
8 than 10 percent of their capacity for other shippers.

9 So, given -- yeah, that's my answer.

10 Q. Until today, did you know that the pumps on
11 the line can be throttled back so that it is
12 operating with a total capacity of about
13 200,000 barrels per day instead of 300,000?

14 A. I know, generally, how pumps work. And they
15 can be operated at below maximum pressure.

16 Q. And you knew that before today's testimony?

17 A. Sure.

18 Q. And the fact that even though if you turn
19 the pumps on full blast, it has a 300,000-barrel
20 capacity, but if you throttle them back, because
21 there isn't that 90,000 barrels per day use, that
22 still doesn't influence your opinion about whether or
23 not it's a private line?

24 A. No. Because there's still -- I am sure it

1 would take that business on that extra 90,000. If
2 somebody was willing to pay them to ship product, I
3 can't imagine they would pass up that business
4 opportunity and throttle it back.

5 Q. Isn't it true today that you learned that
6 there is no other interest in shipping on it than
7 those two?

8 A. I don't know.

9 Q. Wasn't that the testimony you heard today?

10 A. I believe that was what Enbridge said.

11 Q. Now, knowing that there is no interest, no
12 public demand beyond 210,000 and knowing that they
13 can throttle back the pumps so that the maximum
14 capacity of the pipeline is 210,000, does that affect
15 your opinion that it is not a private line?

16 MR. THOMAS: Excuse me, your Honor. This is
17 unusual, but I do object, because that
18 mischaracterizes the record. He did not testify that
19 there was no other demand and would be no other
20 demand.

21 So you can rephrase the question. But I
22 mean, to characterize the witness's testimony
23 incorrectly is wrong.

24 MR. TURNER: Well, he did --

1 MR. THOMAS: Committed and noncommitted.

2 MR. TURNER: Let me just tell you, he did
3 not testify there would not be demand in the future.
4 But he also didn't testify that there would be. And
5 he did say that there was no other demand that he was
6 aware of, other than the committed shippers.

7 MR. THOMAS: No other committed demand,
8 that's right.

9 If you look in the testimony, it actually
10 talks about other -- that others have expressed
11 interest. So I just want this to be accurate.

12 You can ask your question, but not
13 mischaracterize the record.

14 Q. (By Mr. Turner) Well, first of all, let's
15 talk about the motion and what it states in there and
16 what the witness has verified.

17 The motion makes reference to the fact that
18 there could be other shippers sometime in the future.

19 Now, do you consider that sort of statement
20 to be solid enough to use in a factual analysis of
21 what the situation would be at the time the decision
22 is made whether or not to change the pipeline
23 diameter by the Illinois Commerce Commission?

24 A. I think it's irrelevant, because like I

1 said, two things. Number one, there is already a
2 second shipper on the pipeline. Which to me, makes
3 it not be a private line. Second of all, the FERC
4 has already, to my understanding, has already ruled
5 that they just need to hold out 10 percent of the
6 capacity. Doesn't say anything about there needs to
7 be firm commitments for that capacity in order to be
8 a common carrier.

9 Q. Let me ask you about FERC now.

10 If you were to take the consideration that
11 you have for the FERC decision out of your analysis,
12 would that affect your opinion?

13 A. No.

14 Q. And do you believe that a five percent, or
15 10,000-barrel per day shipper, coupled with a
16 \$200,000 (sic) barrel per day shipper, who is also a
17 35 percent owner, do you believe that that smaller
18 shipper then causes this line to definitely not be a
19 private line?

20 A. I don't know of any Commission rules that
21 specify how many shippers or how much of a percentage
22 each shipper has to have in order to determine
23 whether it's private or common carrier. I am also
24 not aware of any other decisions that the Commission

1 has made where there were two or more shippers and
2 the pipeline was deemed to be a private line.

3 JUDGE JONES: Mr. Turner, can you give us an
4 idea?

5 MR. TURNER: I will throw it in the hot
6 chip. Thank you for reminding me.

7 Q. (By Mr. Turner) So based on your
8 interpretation of the limiting Order as to how this
9 case --

10 JUDGE JONES: I was just asking if you have
11 an idea how much longer.

12 MR. TURNER: You were asking. If I could, I
13 would like to say 15, and I might be done in 10.

14 JUDGE JONES: Thank you.

15 Q. (By Mr. Turner) Based upon your
16 interpretation or understanding or opinions about
17 what the scope of this hearing includes, due to the
18 limiting nature of the ICC Order, what issues then
19 are pertinent for today's hearing?

20 MR. OLIVERO: Your Honor, I guess I am just
21 going to object again, because I think the very
22 purpose of his direct testimony and response to the
23 Motion to Reopen, I think, addresses what he
24 considered to be pertinent.

1 JUDGE JONES: I think this question has been
2 asked and the witness has answered it.

3 MR. TURNER: Judge, he said it was limited.
4 And we struggled around with looking for the Order.
5 But I have never learned what issue he thinks is on
6 the table.

7 JUDGE JONES: You have asked that question.
8 He's provided answers to it. Now, you can challenge
9 those answers or you can follow up and ask him about
10 some things, and that you have been doing.

11 But that sounds like the same question, to
12 me, that the witness answered. But you're free to
13 ask a different one, however related it may be, and
14 attempt, as you have been doing over the last several
15 minutes, to test his answers and explore where he's
16 going with that.

17 Q. (By Mr. Turner) For the issues that you
18 believe are properly -- should be properly before
19 this hearing today, what evidence do you believe
20 would be probative to prove those issues?

21 A. Can you define what issues you're talking
22 about?

23 Q. The issues that you have apparently answered
24 that I didn't hear.

1 JUDGE JONES: Move along with your next
2 question, please.

3 MR. TURNER: Okay.

4 Q. (By Mr. Turner) The question is: What
5 evidence is probative of the issues that you believe
6 are properly being considered here today?

7 MR. OLIVERO: Your Honor, I thought we just
8 said those have been answered. He has at least tried
9 to explain what he thought was important. I mean, in
10 terms of what evidence is probative, I think you're
11 asking him to make the ultimate decision in this
12 case.

13 JUDGE JONES: Objection sustained. I have
14 sustained very few objections to Intervener
15 questions.

16 MR. TURNER: I will move on, Judge. Thank
17 you.

18 JUDGE JONES: That doesn't mean I am going
19 to allow them all.

20 Q. (By Mr. Turner) Is the public purpose a
21 legitimate question for today?

22 A. The public purpose as it relates to what?

23 Q. A Certificate of Good Standing.

24 MR. OLIVERO: I guess I am going to object

1 as to whether he's talking about a Certificate of
2 Good Standing or just the amendment to the Order.

3 MR. TURNER: I am talking about the
4 amendment, so I will restate it if it will please
5 everybody. Thank you.

6 Q. (By Mr. Turner) Is the public purpose and
7 issue today for the purposes of amending the
8 Certificate of Good Standing issued in 07-0446?

9 A. I think that issue was already dealt with in
10 the previous version of Docket 07-0446.

11 Q. That's not at issue?

12 A. I don't believe it is.

13 Q. Is necessity an issue?

14 A. I think the only issue is how is the size
15 change in the pipeline.

16 Q. And the size change of the pipeline,
17 evidence regarding that that's pertinent, consists of
18 what?

19 A. I mentioned several things. Like how if the
20 size change would affect the route in any way. If it
21 would affect the payouts being made to landowners.
22 If it would affect the safety or the maintenance of
23 the pipe. If the pipe would be constructed in a
24 different manner, operated in a different manner. So

1 those were the issues I looked at. If the size
2 change was going to affect any of those issues.

3 Q. And what investigations did you do to
4 determine whether or not the size change affected
5 safety?

6 A. My investigation was to review all of the
7 data request responses and the various filings by the
8 -- by all the parties in the case.

9 Q. In its motion, which I guess is its
10 testimony, Enbridge makes the comment that it still
11 has regard for safety.

12 And did you consider that satisfactory
13 enough information to conclude that there were no
14 safety concerns with the 24-inch pipeline?

15 A. Yes. I mean, I continued to get quarterly
16 reports from Enbridge. I am not sure which docket
17 it's related to. They sent quarterly reports on what
18 they have done to address safety issues in the
19 Company and to upgrade their operations and safety.

20 Q. And those quarterly reports were ordered in
21 the Flanagan South Pipeline, which I was a
22 participant in as a lawyer for Intervenors, do you
23 recall that?

24 A. Yes.

1 Q. Isn't it correct that the statute or the
2 procedures in which you have come to understand how
3 decisions are made in an ICC case are that the
4 decisions must be supported by the evidence inside
5 that case as opposed to evidence in some other case?

6 A. What I was going to finish saying was that I
7 believe they said that the commitments that they have
8 made previously in the other dockets are continued to
9 be enforced here. That they will continue those
10 safety procedures.

11 I will go ahead and tell you where I found
12 that.

13 Q. Well, it says here in paragraph eight on
14 page seven of the motion, and now their testimony,
15 that in 13-0446, there was a commitment made to do
16 the same thing that existed in the finding in South
17 Pipeline.

18 Now, do you consider the Case 13-0446 and
19 07-0446 to be the same case?

20 A. No.

21 Q. And so what they do in 13-0446 has nothing
22 at all to do, from an evidentiary point of view, with
23 regard to facts presented in 07-0446, does it?

24 A. I wouldn't go to the other docket to presume

1 facts for this docket. But when they say in this
2 docket they are adopting the standards that were
3 approved in the other docket, then I find that
4 relevant.

5 Q. Let me ask you how that happens then. Are
6 you anticipating that what is stated on page seven in
7 paragraph eight of the motion, and now the testimony,
8 is that they're going to file it twice and in the SAX
9 situations? Once in 13-0446 and once again in
10 07-0446?

11 A. I don't anticipate a duplicate filing.

12 Q. So since they did commit to do it in
13 13-0446, indeed you are using that as evidence in
14 this case?

15 A. No.

16 Q. Okay. Explain.

17 A. The evidence that they have put forth in
18 this case is what I am relying on in this case. They
19 said they will operate the pipeline in the same
20 manner that they were going to operate the pipeline
21 in the original '07 docket.

22 Q. Okay. So it doesn't have to do with the
23 higher level of safety standards that Enbridge was
24 ordered to perform by the U.S. Department of

1 Transportation, but instead has to do with the safety
2 standards that were talked about back in 2008 in
3 evidence?

4 A. It's both. Like they say at the bottom of
5 page six: Use of the 24-inch pipe will not require
6 any change in right-of-way easement agreements
7 (including landowner compensation levels agreed to),
8 existing easement rights or patrol and maintenance
9 practices approved in 2009 in the recent eminent
10 domain Order.

11 And it goes on from there. That's evidence
12 being presented in this case.

13 MR. TURNER: I am going to move on, Judge.
14 And I just have a few more questions to ask and I
15 will be done. And I want to thank everybody for
16 their patience here with me.

17 Q. (By Mr. Turner) The reason why the Staff
18 concluded that and suggested to Enbridge that it make
19 this amendment change is because construction is
20 supposed to occur consistent with the terms of the
21 Certificate of Good Standing, isn't that correct?

22 A. You're asking a legal question now.

23 Q. Do you have an opinion in your -- do you
24 have an understanding based on the work you do here

1 and how you work with laws and rules and applications
2 and different things?

3 A. Do I have an opinion as to what?

4 Q. As to the reason why an amendment would be a
5 good idea for Enbridge?

6 MR. OLIVERO: Your Honor, I guess I am going
7 to object as to what the relevance of Mr. Maple's
8 opinion is on that.

9 I mean, if Enbridge went ahead and filed it,
10 I think we have to deal with the facts.

11 MR. TURNER: He's recommending the
12 amendment.

13 MR. OLIVERO: After Enbridge filed the
14 motion to it.

15 MR. TURNER: Right.

16 I understand what you're saying now. I
17 apologize. I withdraw.

18 Q. (By Mr. Turner) Is the reason you're
19 recommending approval is so that the construction
20 will match the Certificate of Good Standing in terms
21 of the pipeline diameter? One of the reasons?

22 A. I am recommending approval because they
23 filed the application and I believe they meet the
24 requirements.

1 Q. Now, is it your understanding that the
2 eminent domain award in 13-0446 applied to a
3 construction project for a 36-inch pipeline?

4 A. I don't believe that's true. I don't
5 believe there was anything in the Final Order in the
6 '13 docket that specified a size for the pipeline.

7 Q. In the Final Order for the '13 case, it says
8 that eminent domain is awarded for the certificate
9 issued in 07-0446. Are you aware of that?

10 A. It would be helpful if you produced the
11 document.

12 Q. I do have that one with me.

13 MR. TURNER: Do you want to look it over
14 before I hand it to him?

15 MR. OLIVERO: What is this?

16 MR. TURNER: That's the Order.

17 MR. OLIVERO: This is the Proposed Order.

18 MR. TURNER: Yeah. All I really want to
19 show him is this one page, this paragraph.

20 MR. OLIVERO: It's just this is the Proposed
21 Order.

22 MR. TURNER: Is it like the final one?

23 MR. OLIVERO: That I don't know. It's not a
24 final one. I don't know.

1 MR. TURNER: I want to show it to him
2 anyway.

3 MR. OLIVERO: All right.

4 Q. (By Mr. Turner) Let me show you what I do
5 have a copy of today. This is page 35 of the
6 Proposed Order, the very last paragraph that's shown
7 here --

8 MR. THOMAS: We have a copy of the actual
9 Order of the page he's talking about. If you want to
10 check. Seems to me to have a Proposed Order shown to
11 the witness doesn't make much sense.

12 Q. (By Mr. Turner) Okay. I am going to show
13 you what has been loaned to me as page 37 of a Final
14 Order. And I want you to look at the paragraph. In
15 the middle, it says: It is therefore ordered by the
16 Illinois Commerce Commission.

17 Isn't that Order made for an existing
18 Certificate of Good Standing in the 07-0446 case?

19 A. Can I read it?

20 Q. Sure.

21 A. Okay. What was the question?

22 Q. That's a loaner. So when I am done asking
23 you, I don't think any of us need to keep that in
24 your testimony. I would ask you to return it.

1 But with regard to the paragraph I pointed
2 out to you, doesn't the Final Order in 13-0446 grant
3 eminent domain for the Certificate of Good Standing
4 that existed in 07-0446?

5 A. Yes.

6 Q. At the time it granted that, that
7 Certificate of Good Standing provided for a 36-inch
8 pipeline?

9 A. Yes.

10 Q. So not from a legal perspective -- not even
11 lawyers probably should be commenting on this. We
12 should probably leave it to the judges. But based on
13 how you, in your line of work, connect these things
14 together, your understanding, and the fact that you
15 work with rules and laws and different things to be a
16 witness here, the eminent domain was awarded for a
17 36-inch pipeline and not a 24-inch pipeline.

18 JUDGE JONES: Is that a question?

19 MR. TURNER: Yes.

20 THE WITNESS: That I am not sure is correct.
21 You're correct in saying that it was granted for the
22 pipeline that was approved in the other docket and
23 you're correct that the size was 36 in the other
24 docket.

1 But this particular Order does not say --
2 does not put a size on the pipeline.

3 MR. TURNER: Judge, I am going to apologize
4 to you for taking so long and asking questions that
5 you wanted to not have me ask. But I appreciate your
6 kindness today and patience with a humble little farm
7 boy here from Bloomington, Illinois.

8 JUDGE JONES: Thank you, Mr. Turner.

9 MR. TURNER: And I want to thank the witness
10 too, and counsel.

11 JUDGE JONES: Dr. Pliura, how much do you
12 have for this witness approximately?

13 DR. PLIURA: I have substantially more than
14 probably a half hour. So maybe 45 minutes. And I
15 apologize. But I am happy to start. I would not
16 anticipate getting out of here quickly though.

17 MR. TURNER: May I comment?

18 JUDGE JONES: On what?

19 MR. TURNER: Well, I was going to just make
20 a suggestion. I haven't asked, but if opposing
21 counsel would like, Mr. Kraft can be identified and
22 put his booklet in the record if they don't have
23 lengthy cross. If they intend that, I withdraw that
24 suggestion.

1 JUDGE JONES: Is there cross for the
2 Intervenor witnesses?

3 MR. REED: Thank you, your Honor. Darryl
4 Reed. I do not plan to cross either Mr. Kraft or Mr.
5 Carlisle. I will be making motions on some of the
6 attachments attached thereto. But I can certainly do
7 that in writing so as not to belabor the record with
8 the number of my legal arguments at your pleasure.
9 But I will not be cross examining them.

10 MR. TURNER: Your Honor, I will be willing
11 to present that subject to what he just described.

12 JUDGE JONES: Okay. Off the record
13 regarding short-term scheduling.

14 (Discussion off record.)

15 JUDGE JONES: We're back on the record.
16 Very briefly, we intend to finish up the cross
17 examination of this witness. Whatever remains
18 unfinished beyond that will be handled in a different
19 manner. We'll leave it at that. But it will require
20 some communications in order to arrive at a
21 convenient time and manner, probably by phone, to get
22 those things accomplished.

23 Dr. Pliura.

24 CROSS EXAMINATION

1 QUESTIONS BY DR. PLIURA:

2 Q. Mr. Maple, I have some questions with
3 regards to the communications that you and the Staff
4 had with representatives of Enbridge.

5 Is it my understanding that the
6 communications that you and the other Staff members
7 at the ICC had about changing the size of the pipe
8 and amending the certificate happened prior to May
9 19, 2014?

10 A. Again, I don't have dates in front of me.
11 Probably the filings that my attorneys have made
12 probably lay out the timelines better than I can
13 remember it.

14 Q. Do you know if the filing had occurred or
15 not?

16 A. If which filing had occurred?

17 Q. The Motion to Amend had occurred or not.

18 A. Before what?

19 Q. The phone conference that you had with
20 representatives of Enbridge, was that before
21 two-thousand -- was it before May 19th or not?

22 MR. OLIVERO: Your Honor, I am going to
23 object.

24 I think he just stated that he couldn't

1 remember if there was any timeline that was set forth
2 in the pleadings that Staff counsel filed on his
3 behalf. We will be here longer than 45 minutes if
4 we're asking --

5 JUDGE JONES: We won't be here longer than
6 45 minutes.

7 MR. OLIVERO: If we're getting the same
8 question.

9 JUDGE JONES: Objection overruled.
10 Do you recall the question?

11 THE WITNESS: Why don't you rephrase it or
12 restate it?

13 Q. (By Dr. Pliura) I'm just trying to
14 understand. One of the things where I am going with
15 this is ex parte contact, bluntly, bluntly. This was
16 a hotly contested application, the 2007. There were
17 300, I think, plus Intervenors.

18 And I am just trying to understand how it is
19 that we, as intervening members, weren't included in
20 any of this. We didn't know about it, I didn't, as
21 the attorneys. You had the other attorneys.

22 Was there any -- ever any consideration for
23 including Pliura Intervenors' attorney and Mr. Turner
24 in any of these phone discussions?

1 MR. OLIVERO: Your Honor, I am going to
2 object, I guess, if we're going to get into the issue
3 of the ex parte issue that has been raised in several
4 of the responses and pleadings. As I think you can
5 tell, Staff has one view in terms of what the rule
6 and statute says and the Intervenors have a different
7 view. I think then to be categorizing the
8 conversation as ex parte is sort of a legal
9 conclusion.

10 JUDGE JONES: Is there a question pending?

11 DR. PLIURA: I think there was.

12 Q. (By Dr. Pliura) It was, I'm -- was there
13 any consideration given to including counsel for
14 Pliura Intervenors or counsel for Turner Intervenors
15 in any discussions about the project?

16 MR. OLIVERO: I would renew my objection.

17 JUDGE JONES: I didn't hear the term ex
18 parte in that question. Objection overruled.

19 Do you understand the question?

20 THE WITNESS: I think so.

21 JUDGE JONES: Then please answer it, if you
22 know.

23 THE WITNESS: I have no idea. I didn't set
24 up the phone calls. I don't know what was considered

1 by the people who set up the phone call.

2 Q. (By Dr. Pliura) Okay. We talked about some
3 attorneys being present.

4 Was Darryl Reed, did he participate as part
5 of the phone conference that the Staff had?

6 A. That I don't remember.

7 Q. Do you know who? You mentioned a few of the
8 attorneys. I thought you looked around the room.

9 Which attorneys were you referring to when
10 you commented about some of the attorneys in the
11 room?

12 JUDGE JONES: Are you -- now, are you
13 going -- are you doing followup on Mr. Turner's
14 questions or are you doing something else?

15 DR. PLIURA: I am going down my line of
16 questioning.

17 JUDGE JONES: Well, you mentioned looking
18 around the room. You mean just now or earlier?

19 DR. PLIURA: Well, he pointed to, I think --

20 JUDGE JONES: Just now, in response --

21 DR. PLIURA: Yeah.

22 JUDGE JONES: All right. Fair enough.

23 THE WITNESS: I remember specifically that
24 Mr. Thomas was on the phone. The others could have

1 been as well. I don't recall. Not everybody was
2 even speaking during the phone call.

3 Q. (By Dr. Pliura) Did you work with Mr. Reed
4 when he was employed by the ICC as a counsel?

5 A. No. I am not even sure our timelines
6 crossed. Or if they did, I didn't have any dealings
7 with him.

8 Q. Have you communicated either on the
9 telephone or via e-mail with Mr. Reed or anybody else
10 on behalf of Enbridge on this project?

11 A. No, absolutely not.

12 Q. Your testimony --

13 A. I am sorry. Could you read back your
14 question again or make sure I understood.

15 DR. PLIURA: Sure.

16 Read it back, please.

17 (Requested portion of the record
18 was read by the Court Reporter.)

19 THE WITNESS: Well, I told you about the
20 discussions that we had.

21 Q. (Dr. Pliura) Yes.

22 A. So we had two phone calls with him.

23 Q. Okay.

24 A. But not -- I never contacted him on my own.

1 And those were the only two conversations that we
2 had.

3 Q. Your date of -- I am sorry. Your testimony
4 in this particular case says: I asked the Company --
5 I am sorry. Page two of your direct
6 testimony on reopening, page two, line 21.

7 You were asked: What information did you
8 review in this reopened matter? And you answered: I
9 asked the Company to provide supplemental responses
10 to Staff data requests ENG 1.9 and 1.24, which I
11 reviewed.

12 A. That's correct.

13 Q. How did you ask them to provide that?

14 A. Via the phone call.

15 Q. Is it my understanding that the supplemental
16 responses that you were referring to were provided to
17 the Staff on May 21st or shortly thereafter?

18 A. Again, I don't have any calendar or timeline
19 in front of me.

20 Q. Okay. Did you receive a letter from G.
21 Darryl Reed that was dated May 21st regarding the
22 supplemental responses?

23 A. Do you have a letter?

24 Q. Sure.

1 DR. PLIURA: Could I approach?

2 JUDGE JONES: Yes.

3 THE WITNESS: Yes, I think I received this.

4 Q. (By Dr. Pliura) You received the letter
5 that was dated May 21st from G. Darryl Reed. And
6 this letter says by e-mail and regular e-mail.
7 Do you see that up at the top?
8 A. Yes.

9 Q. So did you receive this letter and
10 accompanying documents by e-mail?
11 A. I don't recall. It's possible.

12 Q. Okay. Did you ever submit to the
13 intervening parties any copies of the data requests
14 that you submitted to Enbridge?
15 MR. OLIVERO: Can I just ask for
16 clarification, Mr. Pliura? In terms of just passing
17 them along or?

18 Q. (By Dr. Pliura) Well, at the time that you
19 submitted the data requests to Enbridge, did you
20 provide any of the parties -- anybody else that was a
21 party in 2007 -- with a copy of your data request?
22 A. There were no data requests submitted.

23 Q. Okay. If there were no data requests
24 submitted, then how is it that Enbridge is responding

1 to data requests?

2 MR. OLIVERO: Can I just interject at this
3 point? I think this was a clarification we made with
4 Mr. Turner whether there were updates requested. It
5 wasn't a new set of DRs that were sent.

6 DR. PLIURA: I understand. I mean, I would
7 rather that the counsel, if he's got an objection,
8 not -- pose an objection.

9 Q. (By Dr. Pliura) But did the Staff inform
10 anybody else that had been an intervening party in
11 the 2007 case, the 07-0446, that it had submitted or
12 asked for updates to the data requests, specifically
13 the ones 1.9 and 1.24?

14 A. I have no idea. My counsel handles all
15 communication with the parties. I don't do any of
16 that. So I didn't make any e-mails.

17 Q. Okay. Do you know if anybody else did
18 e-mails?

19 A. I have no idea.

20 Q. Are you aware of any rules at the ICC that
21 would require the Staff to provide any parties with
22 data requests?

23 MR. OLIVERO: I am going to object and just
24 ask to clarify whether you mean internal rules or are

1 you talking about --

2 DR. PLIURA: Administrative practice rules.

3 THE WITNESS: Not in this circumstance.

4 Q. (By Dr. Pliura) Are there some
5 circumstances that would require that?

6 A. I believe so.

7 Q. And what are those? What are the
8 circumstances that would require the Staff to serve
9 copies of the data requests on somebody like Pliura
10 Intervenors or Mercer Turner Intervenors?

11 A. I don't know all the legal rules behind the
12 ex parte communication rule.

13 Q. Well, how do you decide whether or not to
14 actually submit the data requests to the various
15 parties involved?

16 A. I don't decide. That's why I have counsel.

17 Q. Have you talked with anybody, any counsels,
18 about this matter, submission of data requests?

19 MR. OLIVERO: Your Honor, I guess I am going
20 to object. We're starting to get into what
21 conversations Mr. Maple had with his attorney.

22 And I guess, just for clarification, in
23 terms of the question of how data requests are sent,
24 for purposes just of this proceeding, which seems to

1 be maybe a little different than the norm, obviously,
2 the request was made orally, which is different than
3 the norm. And then the responses came in.

4 So at some point, Intervenors received the
5 information. And I guess I am not really sure where
6 we're going at with this line of questioning.

7 JUDGE JONES: Are you raising some kind of
8 attorney-client privilege objection? I am not sure.

9 MR. OLIVERO: Well, he asked what was said
10 between the attorney --

11 JUDGE JONES: I am asking if you're raising
12 that objection.

13 MR. OLIVERO: Yeah. I think he's already
14 said he turned it over to his attorneys in order to
15 handle, I guess, if there were any questions in terms
16 of data requests.

17 JUDGE JONES: Miss Reporter, do you have the
18 question handy there?

19 (Requested portion of the record
20 was read by the Court Reporter.)

21 JUDGE JONES: You're raising an
22 attorney-client privilege objection there?

23 MR. OLIVERO: Yes.

24 JUDGE JONES: Dr. Pliura.

1 Q. (By Dr. Pliura) Anybody other? Have you
2 talked with anybody, other than legal counsel, about
3 the submission of data requests to Enbridge?

4 A. Well, in the last several days, we have made
5 some filings that addressed this issue. And so I
6 gave my input to people.

7 Q. You were asked -- I am sorry. The filings
8 indicated that, in your testimony, the four criteria
9 necessary for obtaining a Certificate in Good
10 Standing to operate a common carrier, you were asked
11 about what are those four criteria on page two at the
12 bottom.

13 You answered: The four criteria are the
14 application must be properly filed; a public need
15 exists for the service; the application is fit,
16 willing and able to provide the service; and the
17 public convenience and necessity requires the
18 issuance of the certificate.

19 Do you see that? Do you need a copy?

20 A. I have got a copy.

21 Q. Bottom of page two.

22 A. Yes, I see that.

23 Q. Does public need mean that there must be a
24 need by the public for the proposed project or what

1 it's going to be shipping?

2 A. Well, again, before we get into this, I am
3 just going to say that I answered this same line of
4 questioning when Mr. Turner was asking me. And I
5 stated that these are the criteria for a new
6 certificate. I don't believe they apply to an
7 amending certificate.

8 Q. And I know you're not a lawyer, right?

9 A. I am not a lawyer.

10 Q. So I just assume we can let the judges
11 decide that. But I would just like to know whether
12 the public need for service would be affected by the
13 amount of product that's going through a pipe if that
14 changes.

15 Do you understand really what I am asking?
16 I don't have a lot of time.

17 A. Not exactly.

18 Q. Well, this project originally started that
19 it was going to pump 400,000 barrels through a
20 36-inch pipe, correct?

21 A. Correct.

22 Q. And there was a lot of testimony about it
23 was coming from multiple shippers. And that's all in
24 the record. Okay.

1 You understand now, don't you, that this
2 project has changed. There aren't multiple shippers
3 that are going to use this project, correct?

4 A. There are multiple shippers.

5 Q. Do you know who the shippers are?

6 A. I have the same information that you have.

7 Q. I don't have a lot of time.

8 A. I know it's Marathon and one other
9 undisclosed shipper.

10 Q. Now, the original proposal was to pump
11 400,000, but now it is 210,000 apparently, correct?

12 A. It's 300,000 is the capacity of the pipe.

13 Q. Okay. Are you aware that there is only
14 210,000 barrels per day that's been committed for
15 this project?

16 A. Yes. They signed long-term contracts.

17 Q. Are you aware that only -- they have had two
18 open shipping season signups, and that only two --
19 allegedly, two shippers have signed up for this?

20 A. That was the testimony we heard today.

21 Q. You're aware of that?

22 A. I am aware of it.

23 Q. Does that play in any way the change from
24 400,000 down to 210,000? Does that change the public

1 need for this project?

2 A. It's not 210,000. You keep saying that.

3 It's 300,000.

4 Q. What testimony have you seen from anybody,
5 any engineer in this project, that would suggest that
6 this pipe will handle 300,000 barrels of product per
7 day?

8 A. It was in their application.

9 Q. I know that number was in there. But you
10 didn't see any experts testify to that, did you?

11 A. There was no testimony put forth by
12 Enbridge.

13 Q. There hasn't been any testimony about what
14 was in their application, submitted testimony that
15 would talk to the actual amount of volume that will
16 go through a 24-inch pipe, correct?

17 A. Correct.

18 Q. Is it the Staff's custom and practice to
19 just accept what somebody puts down in an application
20 without any type of verification, whether it's asking
21 for experts or -- I mean, it just seems like -- I am
22 trying to understand how you can say this is
23 necessary if there is no testimony that there will --
24 this 24-inch pipe will actually ship 300,000 or

1 210,000.

2 How can you conclude that?

3 MR. OLIVERO: Your Honor, I guess I am going
4 to object, because I think that's inaccurate to say
5 that the Motion to Reopen wasn't verified. It was,
6 in fact, as I think all of the pleadings filed on
7 behalf and tendered into evidence today by Enbridge
8 were. Just for point of clarification.

9 JUDGE JONES: Was that an objection there?

10 MR. OLIVERO: The question assumed that
11 there was no verification. So I guess the question
12 was misleading or misinformed or didn't contain all
13 the correct facts.

14 JUDGE JONES: Are you objecting or are you
15 just pointing it out?

16 MR. OLIVERO: I am pointing it out so a new
17 question can be asked by Mr. Pliura.

18 JUDGE JONES: There is no objection to that
19 one.

20 Do you understand the question?

21 THE WITNESS: I think so.

22 I mean, I am not sure what further
23 verification you wanted Staff to do. There is no
24 physical pipe in the ground that I can go measure or

1 take a flow rate of. So at some point, Staff has got
2 to rely upon verified statements made by the Company.

3 And sure, I could have sent a data request
4 saying is 300 correct. And they, I am sure, would
5 say, yes, we put that in our application. We affirm
6 that.

7 And I don't remember any intervening
8 testimony that questioned whether or not 300 was the
9 correct flow rate either.

10 Q. (By Dr. Pliura) I have got 15 minutes left
11 here. So is it correct that the Staff questioned
12 whether the 24-inch line would ship less product?

13 A. Well, the application states that it will.

14 Q. Okay. Did the Staff ask how does that
15 affect Enbridge's demand study?

16 A. We put that forward in that e-mail of
17 questions to the Company as possible things that we
18 might be interested in.

19 Q. And what demand study were you talking
20 about?

21 A. Probably the demand study that was done
22 initially in the original 2007 docket.

23 Q. Okay. And is there anything in the
24 application that's been submitted into the evidence

1 in Exhibit 1 or Exhibit 2 that references how the
2 change in the pipe from 36 to 24 affects Enbridge's
3 demand study?

4 A. I don't think it's stated in that particular
5 way. They talk about how the demand has changed.

6 Q. Is it correct that the Staff asked whether
7 Enbridge had lost shippers since 2007?

8 A. Where are you getting these questions from?

9 Q. I am just asking you questions.

10 A. If you're referring to the set of questions
11 that, like I said, was provided in an e-mail, those
12 weren't questions that we were posing to them. They
13 were, like I said, they were questions that were
14 brainstormed before we had any information about the
15 project being changed or what had changed with the
16 project.

17 And -- sorry, I lost my train of thought.
18 The questions were not necessarily posed in a way
19 that we demanded answers to those. Those were just
20 things that we thought might end up being important.
21 And then once the reopening Order came from the
22 Commission, the limited scope of that made some of
23 those questions irrelevant.

24 Q. Did anybody -- have you seen any document

1 that references anything about why the Commission
2 changed its original Order and then came out with
3 this limited Order?

4 A. I have not.

5 Q. Are you aware of any e-mails that were
6 circulated?

7 A. No.

8 Q. Did anybody speak to or talk to Enbridge
9 after the Order came about?

10 A. Well, I can only tell you what I know. And
11 I don't know of any conversations.

12 Q. Does limiting -- I mean, do you understand
13 -- what is your understanding of the significance of
14 the change in the ICC Order where they apparently
15 concluded that word limited to the change of the
16 pipe?

17 A. I am not sure I follow your question.

18 Q. I guess what I am -- I am wondering, for
19 example, changing the pipe, doesn't that, if you
20 limit that to changing the pipe from 36 to 24, isn't
21 the change in the pipe also relevant as to how much
22 product is going to be shipped through that
23 particular pipe?

24 A. It could. It could not. I mean, the old

1 pipe that was going -- that had a maximum of 400,000
2 a day, I don't recall if it was going to be operating
3 a full 400,000 a day, every day, or not.

4 Q. Well, is it correct then that you really
5 don't know, as you sit here, whether that was or
6 wasn't the case?

7 A. I didn't find that that change was relevant
8 given the scope of the reopening.

9 Q. If this particular project doesn't ship
10 210,000, would that have any bearing if it's
11 200,000 barrels per day, would that have any bearing
12 on public need or public benefit?

13 A. I mean, in my mind, it's still a benefit to
14 the public.

15 Q. And what is that based on? What is that
16 comment based upon?

17 A. Well, several things in my original 2007
18 testimony. It said that the benefits were that we
19 would be -- have a redundancy of pipeline network.
20 That if one pipeline went down that, you know, it's
21 good to have backup or other means of moving oil
22 throughout the country.

23 I also mention that this pipeline would
24 bring in more sources of oil from friendly countries,

1 be it Canada or the United States. That would help
2 offset imports from potentially dangerous foreign
3 countries.

4 Q. I got about seven minutes left. So I want
5 to cut you off there and ask another question.

6 You're aware though, as you sit here now,
7 that all of the testimony that was in the record
8 about the heavy crude coming down from Canada that
9 was originally submitted in support of this
10 application, that is no longer the case.

11 You're aware of that, right?

12 A. I wouldn't say that's totally not the case.
13 I think that Enbridge has put forth that there is
14 going to be light and heavy crude mix shipped and
15 that they don't always know where the origin of the
16 product is going to come from.

17 Q. Are you telling me then that the project, in
18 your opinion, hasn't changed from being primarily or
19 mainly a project for Canadian product to be shipped
20 down to the United States and now a project for light
21 oil?

22 A. I think I have said that is the case, that
23 the mix of heavy to light has changed. But the
24 pipeline, as it was -- the pipeline, as it was

1 ordered, originally didn't specify a weight of the
2 oil. It was just a petroleum pipeline. So that
3 project has not changed.

4 Q. Okay. And there is no question that the
5 volume that's being proposed is different, correct?

6 A. The maximum volume is different.

7 Q. Do you know, as you sit here, how much
8 different the volume is from a 400,000 a day pipe to
9 I am sorry -- a 36-inch pipe versus a 24-inch pipe?

10 A. I think you just about answered your own
11 question. Going from 400,000 to 300,000.

12 Q. And no, I am not asking you that, Mark.

13 I am asking you, do you know, are you
14 qualified to say how much a 24-inch pipe will be able
15 to transport versus a 36?

16 A. Well, I can figure up what the diameter
17 difference does to the cross-sectional area and
18 figure out what the size difference is.

19 Q. I just don't have much time.

20 Are you here to say today that you can
21 testify that the 24-inch pipe will transport certain
22 volume per day and a 36-inch diameter pipe will
23 transport X amount?

24 A. It's going to depend on what type of pumping

1 that they put on the pipeline. There's lots of
2 factors besides just the size.

3 Q. Sure, Mark. I am asking you a question.
4 You're not able to answer that question.

5 What are the volumes capable of going
6 through a 24 versus 36? You're not an expert, right?

7 A. I am an expert. I am an engineer.

8 Q. Mark, I am asking you about this project.
9 Okay. This particular project.

10 A. I understand.

11 Q. I don't see it in your testimony here. You
12 haven't submitted any testimony, right?

13 A. I did submit testimony.

14 Q. That suggests what volume this project will
15 be able or capable of transporting?

16 A. Probably not.

17 Q. Really, that's what I am getting at. You
18 heard the Enbridge expert. I am sorry -- the
19 Enbridge individual who testified today said he
20 couldn't testify to the volume, correct?

21 A. You're characterizing his testimony. I
22 don't remember if that's correct or not.

23 Q. Okay. All right.

24 Did you suggest that all of the filings be

1 -- with regard to the Motion to Reopen be sent to the
2 Pliura Intervenors and Turner Intervenors? Is that a
3 recommendation you made?

4 A. I don't handle the filings. That's what my
5 counsel does.

6 Q. I just want you to answer my question
7 though.

8 A. I believe I just did answer it.

9 Q. Did you recommend to anyone that Enbridge
10 send copies of the Motion to Reopen to Pliura
11 Intervenors and Mercer Turner Intervenors and the
12 parties involved, the landowners?

13 MR. OLIVERO: Your Honor, I am going to
14 object. I think that's beyond the scope of
15 Mr. Maple's duties as an engineer.

16 DR. PLIURA: I am just asking if he did or
17 not.

18 JUDGE JONES: I guess I am not sure, given
19 the earlier objection and the ruling on it, whether
20 that question includes communications with his
21 counsel.

22 DR. PLIURA: I don't want any communications
23 with counsel.

24 THE WITNESS: I don't generally tell my

1 counsel how to make their filings as part of my job,
2 and I didn't do so in this case either.

3 Q. (By Dr. Pliura) I think the -- just look
4 through my notes here.

5 Does the Department have any records they
6 would keep of any phone logs or phone conferences
7 like this conference that the Staff and the Staff
8 counsel had with Enbridge?

9 A. I have no idea.

10 Q. You don't know.

11 How would that phone conference normally be
12 set up?

13 A. My counsel set up that phone conference. I
14 don't know how they did it.

15 Q. Are you ever involved in setting up phone
16 conferences?

17 A. To the extent they ask me when I am
18 available, and I tell him I have time tomorrow. But
19 I don't contact the other parties or generally make
20 the phone calls.

21 DR. PLIURA: Okay. I don't have any other
22 questions.

23 JUDGE JONES: Thank you, Dr. Pliura.

24 MR. TURNER: Your Honor, could I make sure I

1 get the record. Again, I don't know if I did, but I
2 want to ask for e-mails that have been testified by
3 Mr. Mark Maple.

4 MR. OLIVERO: If we can find that. There
5 was just one, I think he talked about, that we can
6 send you. And then we're going to check. I don't
7 know. John was sending me a note of when we first
8 communicated with Enbridge.

9 MR. TURNER: I want it in the evidence. And
10 you said to me if I got leave to put it in evidence.
11 Otherwise, I just want you to file it as an
12 evidentiary thing.

13 MR. OLIVERO: I think you can ask leave if
14 you want to go ahead and do that. That's fine.

15 MR. TURNER: So you're going to send to me.

16 And Judge, I have one thing. I had a motion
17 filed. And then you told Enbridge's counsel to be
18 specific twice about that motion, you know, about
19 answering.

20 And I was just curious. Am I assuming that
21 that motion was really denied, wasn't it? Because we
22 had our hearing today and I never got it extended. I
23 am just curious about -- and I am not asking for a
24 formal ruling either. I am just -- was it denied by

1 pocket or what? I am just asking.

2 JUDGE JONES: Are you talking about which
3 motion?

4 MR. TURNER: Well, there was one two days
5 ago that I filed.

6 Or was it taken with the case?

7 JUDGE JONES: Well, it had different parts
8 to it. One was to cancel this hearing. And then a
9 notice went out that the hearing would go forward.

10 There were some concerns expressed about the
11 DR responses. And subsequently, there were two
12 notices issued directing Enbridge to provide some
13 clarification.

14 And then in one of the notices that went out
15 also extended the testimony -- supplemental testimony
16 filing date. So there was that.

17 Beyond that, I don't really have anything
18 else to say about the motion at today's date.

19 MR. TURNER: Thank you, Judge.

20 MR. OLIVER: Your Honor, can I have two
21 minutes with my client to determine whether we would
22 have any redirect?

23 JUDGE JONES: I don't know what to tell you.
24 We were supposed to be out of here at 5:30.

1 MR. OLIVERO: Can I have 30 seconds?

2 MR. TURNER: Your Honor, I would stipulate

3 that he can file written redirect if he'd like. I

4 have no problem with that.

5 JUDGE JONES: Go ahead.

6 Mr. Olivero.

7 MR. OLIVERO: Your Honor, we would have no

8 redirect.

9 JUDGE JONES: Thank you.

10 That concludes the questioning of Mr. Maple.

11 There is some unfinished business, as was

12 noted. There was Intervener testimony and then there

13 are some other items that are still pending. I think

14 two of the Applicant's exhibits.

15 And I believe the plan is to schedule a

16 hearing date to be conducted by telephone as soon as

17 possible to take care of these open matters. No

18 witness will have to attend in person, certainly.

19 But I think it's also been indicated that there may

20 be some objections to the Intervenors' testimony. So

21 that may have some affect on what exactly happens

22 with that Intervener, with that Intervener testimony.

23 So there will not be anything scheduled

24 without providing an opportunity to all the parties

1 to come up with a date that works for all of you.
2 And then, in addition, there is addition to the above
3 matters. There is briefing schedules to be
4 implemented.

5 So those are the types of things that
6 remain. And I think the idea is that we'll schedule
7 that hearing by phone and then attempt to do all of
8 the above in a way that's as convenient as possible.

9 So does anybody have any questions about
10 that process?

11 DR. PLIURA: I do not.

12 JUDGE JONES: All right.

13 Also, our thanks to Dr. Pliura for finishing
14 up your cross examination by the -- in the timeframe
15 that you did.

16 At this time, let the record show that
17 today's hearing is concluded. In accordance with the
18 above, this matter is continued to a hearing date as
19 mentioned above with a specific date to be determined
20 at a later time. Thank you all.

21 (Hearing continued to a future date
22 and time to be determined.)

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CERTIFICATE OF REPORTER

I, Angela C. Turner, a Certified Shorthand
Reporter within and for the State of Illinois, do
hereby certify that the hearing aforementioned was
held on the time and in the place previously
described.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal.

Angela C. Turner
IL CSR #084-004122